THE FUGITIVE SLAVE LAW.

8.

SPEECH

OF

MR. HORACE MANN, OF MASS.,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, IN COMMITTEE OF THE WHOLE ON THE STATE OF THE UNION, FRIDAY, FEBRUARY 28, 1851,

ON THE FUGITIVE SLAVE LAW.

Mr. MANN said:

Mr. CHAIRMAN: Some time ago I prepared a few comments upon those prominent measures of the last session, which have since arrested the attention of all the lovers of constitutional liberty, and of moral and religious men, throughout the civilized world. I am unwilling to suffer this session to close without expressing the reflections I have formed; because I deem it but a reasonable desire that my opinions should be placed upon the records of the very Congress to whose measures they refer.

Does any one ask what benefit I anticipate from a discussion of this subject at the present moment? I answer, this benefit at least: that of entering a solemn *protest* against a grievous wrong, and of placing upon the records of the country what I believe to be the views of a vast majority of my constituents, in common with a vast majority of the people of Massachusetts.

Some of those compromise measures are destined to be of great historic importance. They will be drawn into precedent. When, in evil days, further encroachments are meditated against human rights, these old measures will be cited as a sanction for new aggressions; and, in my view, they will always be found broad enough and bad enough to cover almost any namable assault upon human liberty. When bad men want authority for bad deeds, they will only have to go back to the legislation of 1850, to find an armory full of the weapons of injustice.

Sir, legislative precedents are formidable things. If created without opposition, and especially if acquiesced in without complaint, they become still more formidable. Now, if there were no other reasons for reviving this subject at the present session of Congress, this alone would be its ample justification,—that it forefends the argument from acquiescence.

When several of those measures were passed, and particularly when one of the most obnoxious and criminal of them all was passed,—I mean the fugitive slave bill,—this House was not a deliberative body. Deliberation was silenced. Those who knew they could not meet our arguments, choked their utterance. The previous question, which was originally devised to curb the abuse of too much debate, was perverted to stop all debate. The floor was assigned to a known friend of the bill, who after a brief speech in palliation of its enormities, moved the previous question; and thus we were silenced by force, instead of being overcome by argument. For, sir, I aver, without fear of contradiction, that the bill never could have become a law, had its opponents been allowed to debate it, or to propose amendments to it. For the honor of the country, therefore, at the present time, and for the cause of truth hereafter, it is important that the hideous features of that bill, which were then masked, should be now unmasked. The arguments which I then desired and designed to offer against it, I mean to offer now. Those arguments have lost nothing of their weight by this enforced delay, and I have lost nothing of my right to present them.

Mr. Chairman, I feel none the less inclined to discuss this question, because an order has gone forth that it shall not be discussed. Discussion has been denounced as agitation, and then it has been dictatorially proclaimed that "agitation must be put down." Sir, humble as I am, I submit to no such dictation, come from what quarter or from what numbers it may. If such a prohibition is intended to be laid upon me personally, I repel it. If intended to silence me as the representative of the convictions and feelings of my constituents, I repel it all the more vehemently. In this Government it is not tolerable for any man, however high, or for any body of men, however large, to prescribe what subjects may be agitated, and what may not be agitated. Such prescription is at best but a species of Lynch law against free speech. It is as hateful as any other form of that execrable code; and I do but express the common sentiment of all generous minds, when I say that for one, I am all the more disposed to use my privilege of speech, when imperious men, and the sycophants of imperious men, attempt to ban or constrain me. In Italy, the Pope decides what books may be read; in Austria, the Emperor decides what books may be written; but we are more degraded than the subjects of Pontiff or Cæsar, if we are to be told what topics we may discuss. If the subjects of a despotic government

are bound to be jealous even of the poor privileges which they possess, how sensitive, how "tremblingly alive all o'er," ought we to be at these threatened encroachments upon freedom of speech and freedom of thought. I think that those who say so much about recalling us to a sense of our constitutional obligations, would do well to remember, that the very first article of the amendments to the Constitution secures the freedom of speech and of the press. By the common consent of this country, manifested in all forms for more than half a century, the old alien and sedition law has been condemned. Has that law been condemned for fifty years in order to make our own shame more conspicuous by its revival under circumstances of intolerable aggravation? Sir, I hold treason against this Government to be an enormous crime; but great as it is, I hold treason against free speech and free thought to be a crime incomparably greater.

If it be just and heroic to rebel against all arbitrary invasions of free thought and free expression, then is it not proportionably base and dastardly to utter menaces, or threaten social or political disabilities for the unconstrained exercise of these birthrights of freemen? On the face of it, it must be a bad cause which will not bear discussion. Truth seeks light instead of shunning it. He convicts himself of wrong who refuses to hear the argument of his opponent. It was well said by Montesquieu, that "the enjoyment of liberty, and even its support and preservation, consists in every man's being allowed *to speak his thoughts and lay open his sentiments.*" Wherefore, then, in a country hitherto reputed to be free, are we told that discussion must be stopped, and agitation be put down? It seems as if, when a free man debases his soul by lending himself to the defence of slavery, God punishes him on the spot by corrupting his own nature with that spirit of tyranny which belongs to slavery. Wherein consists the advantage of a republican government over a despotism, if the freedom of speech and of the press, which can be strangled in the one by arbitrary command, can be stifled in the other by obloquy and denunciation?

It is remarkable, too, that of all the "agitators" in the country, there are none more violent than those who are agitating against agitation. Throughout the North, that portion of the public press which volunteers its influence to extend the domain of slavery, and to maintain it by extra-constitutional laws, is constantly provoking the agitation it denounces. What are these so-called Union meetings in northern cities but an extensive apparatus of agitation,—a piece of machinery to manufacture and send abroad the very articles which its managers declare to be contraband? Through public assemblages, through the public press, and by correspondence designed for the public eye, they are shaking the common air to keep it calm; they are agonizing and in convulsions for repose; they are vociferating to maintain silence. In the most clamorous days of anti-slavery, there was never half so much said and written against the institution as is now said and written for it. Sir, is the right of agitation to be monopolized by those who denounce it? Is free speech to be only on one side: and is it one of the offices of free speech to silence the sentiments it dislikes? I think this is the second time, in the history of this country, when an attempt has been boldly and unblushingly made, to stifle free discussion; and I do not believe the fate of those who are now laboring to accomplish so nefarious a purpose, will be historically more enviable than that of their prototypes who passed the far-famed law against seditious speeches and writings.

Is it not extraordinary, too, that this interdict on discussion should be applied to a subject which touches the highest interests of man, and calls into fervid action all the noblest faculties of his nature; which, more than anything else, tests the question whether a man is a man? We may discuss the questions of bank or sub-treasury, of tariff or of free trade; but the only subject too sacred to be approached, is slavery and its aggrandizements. This is a free country, except when a man wishes to vindicate the claims of freedom. All other parts of the temple may be entered, but slavery is the ark of the covenant, and whoso lays his profane hands thereon must perish.

Sir, how comes it to pass that an institution which even the enlightened heathen of old pronounced to be iniquitous, and which eighteen added centuries of Christian illumination, have proved to be the sum of offences against God and man, should now be protected, not merely by constitutions and laws; but that a general warfare should be waged against all those who would restrain it within its present limits, and keep it from arming itself with new weapons of oppression? How comes it to pass that this should be done, not in the despotisms of Austria and of Russia, but in republican America? Sir, it is not to be done, and cannot be done. Almighty God has so constituted the human soul, that while wrong exists upon the face of the earth, all the noblest impulses of that soul will war against it. The order of nature will war against it. "The stars in their courses" will war against it. Discussion, or agitation, if you please so to call it, is one of the Heaven-appointed means by which truth is to be spread until it covers the face of the earth as the waters cover the sea. It was by discussion and by agitation, in synagogue and in temple, in distant cities and in different empires, that Christianity was carried from its cradle in Jerusalem to the ends of the earth. Did not the disciples of Jesus Christ go "agitating" from city to city, from Palestine to Greece, and from Greece to Rome, notwithstanding they were imprisoned and scourged, and flayed alive and burned, and persecuted as incendiaries and fanatics, by scribe and pharisee and high-priest? The very accusation brought against the Saviour was, "He stirreth up the people, teaching throughout all Jewry, beginning from Galilee to this place." The subject on which anti-slavery men now "agitate" is inferior only in importance to that on which Christ and his disciples "agitated." Nay, the only cause why Christianity has not prospered as it ought, during the last eighteen centuries, and why it has not already overspread the whole earth with its blessings, is, that LIBERTY has not been given it as a sphere to work in. It is because SLAVERY has existed among men; and Christianity never will and never can pervade the earth, until the barriers of slavery are first overthrown. It was by discussion and agitation that the prevailing religion of this country,—the Protestant religion,—broke through the double phalanx of civil and sacerdotal power, and triumphed throughout the leading

nations of Europe, under the indomitable energy of that old hero of Wittemberg, who did not heed nor fear that prince of the slave power, the incarnate devil himself. It was by discussion and agitation that the first glowing sparks of liberty, in the bosom of the Adamses, of Hancock, and of Franklin, of Thomas Jefferson, and of Patrick Henry, were fanned into a flame that consumed the hosts of the tyrant,—that tyrant who sought to put down this dreaded agitation by means not a whit more reprehensible in his day, than those by which certain leading men are striving to silence it now. Where was there ever written or published a more incendiary and fanatical document than the Declaration of Independence?—a torch to set the world on fire. In the present century, what but discussion and agitation, through all the realms of Great Britain and of this country, could have sufficed to extinguish the slave trade,—that foulest blot upon modern civilization? No, sir; agitation is a part of the sublime order of nature. In thunder, it shakes the stagnant air which would otherwise breed pestilence. In tempests, it purifies the deep, which would otherwise exhale miasma and death. And in the immortal thoughts of duty, of humanity, and of liberty, it so rouses the hearts of men, that they think themselves inspired of God; and not the mercenary clamors of the market-place, nor the outcries of politicians clutching at the prizes of ambition can suppress the utterances which true men believe themselves Heaven-commissioned to declare.

The President's message tells us that the compromise measures of the last session are "FINAL." I take the liberty to say of that declaration in the message, with all due respect to the high source from which it comes, that I adopt the sentiment, that those measures are *final*, in one sense only. Their substance and object were, in an extreme degree, pro-slavery and anti-liberty. They marked the passage of this Government through another long stage in the gloomy highway of oppression. They furnished another argument for those who despair of human nature; and they supply the misanthrope with a plausible reason for hating mankind. They affixed another stain upon the character of this country, and set in deeper shade the contrast between the theory of our Government and its practice. They belied still another time the Gospel of Love and Human Brotherhood. Once again, they defied the vengeance of that God who is no respecter of persons, and who will bring the sinner to judgment. If such measures are to be "*final*," in this sense only do I accept the proposition,—that they are to be the last of their kind; that here, at this point, the career of this iniquity is to be stayed; that here, the confederated powers of ambition and of wealth,—of those who aspire to office, and of those who lust for gold, have won their last victory. In this sense only do I accept the President's declaration, that the action of the last Congress on this subject is to be deemed *final*;—that in all future conflicts the right shall not be trampled under foot, but the victims of oppression shall triumph. Base as human nature often proves itself to be, it sometimes manifests a divine resilience, by which it springs with recuperative energy from its guilty fall.

I draw no augury of despair from the calamity that has befallen us. It teaches whatever there is of virtue and of principle in mankind, the task which has been set them to do, and whose accomplishment God will require at their hands.

It has been said by the Secretary of State, in a late speech, that if this subject be reopened in Congress, the friends of freedom will be found in a "lean and miserable minority." What cares my conscience, sir, whether I am in a minority or a majority, *if I am right?* Has any great and glorious cause ever been started upon earth, that did not find itself, at the outset, in a minority? Did Clarkson and Wilberforce open their twenty years contest with a majority; or were not all the office-seekers, and mammon-worshippers opposed to them? Did the resistance of the revolutionary patriots to the Government of Great Britain start with a majority on its side? Did the Pilgrim Fathers resist conformity to ecclesiastical oppression because they were a majority of the people? Did the glorious band of Reformers count on majorities when they defied the racks and the flames of Rome? What would now be our condition if the prophets and heroes of olden days, if the warriors for truth and the martyrs of liberty had yielded to so base an argument as this, and had followed the multitude to do evil, instead of battling for the truth, though it were solitary and alone? I can conceive of but one effect which such a sentiment must produce upon all noble and truth-loving men. It is to make them labor for the right with a zeal commensurate with the infinite baseness of the appeal by which they are urged to abandon it.

But I come now, Mr. Chairman, to the main topic of my remarks, which is a consideration of the character of the fugitive slave law, passed on the 18th day of September last.

The objections most generally urged against this law are of two kinds:

1st. That it is unconstitutional; and,

2d. That, even if the framers of the Constitution did leave an unguarded opening, through which such a law could be introduced without a breach in the structure of that instrament, still, that it is a cruel law, that it discards all those principles of evidence and forms of proceeding which have been devised by the wisdom of ages for the protection of innocence against power, and that in its whole scope and spirit, it is in conflict with our fundamental ideas of human liberty.

It will be seen by this statement, that I here accept the Constitution according to its commonly-received interpretation. There is a class of defenders of this law whom I wish to meet on their own ground. I do not, therefore, object here to the Constitution as they understand it, but to the law. However much a man may reverence the Constitution, though he may make it an idol and worship it, yet I mean to show him that this law is an unholy thing in its presence. I object, then, to the law as a departure from the Constitution,—not as a departure *towards* despotism merely, but *into* despotism. Admitting, what many deny, that when the Constitution speaks of "persons held to service or labor," it means slaves, and admitting that it provides for their reclamation when it says they "shall be delivered up on claim," I still impeach the fugitive slave law for high crimes and misdemeanors against the spirit and the letter of that instrument.

On the question of the constitutionality of this law, the legal mind of the country is divided. It may not be easy to distribute opinions correctly,

on this point, into their proper classes, and to decide upon their relative preponderance. If we include slaveowners and those whose pecuniary interests connect them directly with slavery, and especially if to these we add a strong party who, from political associations and hopes, have surrendered themselves to a pro-slavery policy, perhaps the number, if not the weight, of opinion is in favor of the constitutionality of the law. But if we gather the opinions of disinterested and unbiased men, of those who have no money to make or office to hope for through the triumph of the law, then I think the preponderance of opinion is decidedly the other way. I know it has been said by one prominent individual, that he has heard of no man whose opinion was worth regarding who denied the constitutionality of the law. Now, as it is a fact universally known that gentlemen who have occupied and adorned the highest judicial stations in their respective States, together with many of the ablest lawyers in the whole country, have expressed opinions against the constitutionality of this law, I have but a single word of reply to a declaration so arrogant and insolent as this. That reply is, that on a great moral and political, as well as legal question,—a question that connects itself with ethics as well as with partisan politics, with the success of old parties or the formation of new ones,—*integrity* is as necessary to the formation of a sound opinion as *intelligence*.

I think, however, that one further remark should in candor be made, in regard to the difference of opinions held by honest men on this subject. The constitutionality or unconstitutionality of the fugitive slave law is not a question to be determined solely by any single and simple provision of the fundamental law. Numerous clauses in the Constitution have a bearing upon it. It connects itself with contemporaneous history. It presents a case where commentators and expounders must appeal to precedents and analogies, and to general principles respecting the nature of government and the object of all law. It is therefore a question of construction and interpretation. And, what is a more important consideration still, it belongs emphatically to that class of cases where men who have been trained under one class of institutions, and whose minds have been moulded and shaped by the universal prevalence of one set of opinions, and one course of practice, may honestly come to one conclusion, while those who have grown up under adverse opinions and an adverse practice,—or rather, into whose minds adverse opinions and adverse practices have grown, until they have become a part of the very substance of those minds,—may honestly come to an opposite conclusion. We know, too, that in addition to the powerful influences of education and training, the general cast and structure of men's minds predispose them to take one side or the other of great political and religious questions. Natural biases operate like a law of gravitation to sway different minds in different directions. When, therefore, a southern gentleman, into whose perceptions and reasonings and moral sentiments, the facts and the creed of slavery have been incorporating themselves ever since he was born, tells me that he believes even such a law as this to be constitutional, I can still concede the fulness of his integrity, however strongly I may dissent from the soundness of his opinion. It is a law that might be held constitutional by a bench of slaveholders, while it would be held unconstitutional by all the inhabitants of a free land. It is a law that might be held valid by the courts of Austria, while it would be held invalid by those of England. It is a law which the judges of Westminster Hall might have held valid in the time of the Stuarts, which they might and probably would have held invalid in the eighteenth century, and, in the nineteenth century, would certainly have reprobated and annulled.

My own opinion is, in view of the great principles of civil liberty, out of which the Constitution grew, and which it was designed to secure, that this law cannot be fairly and legitimately supported on constitutional grounds. I express this opinion because, after having formed it with careful deliberation, I am now bound to speak from it, and to act from it. I have read every argument and every article in defence of the law that I could find, from whatever source emanating. Nay, I have been more anxious to read the arguments made in its favor than the arguments against it; and I think I have seen a sound legal answer to all the former. As for any arrogant or supercilious dictum, either that the law is constitutional or that it is not constitutional, unaccompanied by any reason or any reference, all reflecting men must regard it as sheer insolence, come from what quarter it may.

Even should the Supreme Court of the United States declare the law to be constitutional, then, though we must acknowledge their decision, as to the point decided, to be the law of the land, until it is set aside, yet, without any disrespect to that tribunal, we may still adhere to our former opinion. We know how that Court is constituted. A majority of its members are from slaveholding States. Independent, too, of all other considerations, they will feel a strong desire to maintain a former opinion, which was also given when a majority of its judges were from the South. We may, therefore, place our dissent on grounds which, two years ago, when the "Clayton compromise," so called, was under discussion, were so well stated by a distinguished Senator from Ohio, (Mr. Corwin,)—grounds perfectly respectful on our part, and not derogatory to them. He said:

"It is a sad commentary upon the perfection of human reason, that, with but few exceptions, gentlemen coming from a slave State * * all eminent lawyers on this floor from that section of the country, have agreed that you have no right to prohibit the introduction of slavery into Oregon, California, and New Mexico; while, on the other hand, there is not a man, with few exceptions, (and some highly respectable,) in the free States, learned or unlearned, clerical or lay, who has any pretensions to legal knowledge, but believes in his conscience that you have a right to prohibit slavery. * * How is that? Can I have confidence in the Supreme Court of the United States, when my confidence fails in Senators around me here? *Do I expect that the members of that body will be more careful than the Senators from Georgia and South Carolina to form their opinions without any regard to selfish considerations?*"

Besides, the Supreme Court have already, as I will show, decided certain points in such a way that, if they maintain the fugitive slave law, they will be obliged to overrule those points; and it is as creditable to them to suppose they will overrule their decision in Prigg's case, as to suppose they will overrule other decisions in other cases.

In the first place, I believe the Constitution not

only authorizes but requires a trial by jury, in the case of alleged fugitive slaves, when claimed in free States.

The Constitution declares, "The right of the people to be secure in their persons," "against unreasonable" "seizures, shall not be violated; and no warrant shall issue but upon probable cause, *supported by oath or affirmation*, and particularly describing" "the persons or things to be seized."—*Amt., Art. IV.*

It also declares, that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."—*Amt., Art. VII.*

And it also says: "No person shall be deprived of life, *liberty*, or property without due process of law."—(*Amt., Art. V.*) And it is most important to observe that these words, "due process of law," are held by all the authorities *to include the trial by jury*.—3 *Story's Com.*, 661; 2 *Inst.*, 50, 51; 2 *Kent's Com.*, 10; 1 *Tucker's Black., App.*, 304–'5.

That there may be no doubt about the meaning and force of these words, I quote the following passage from Chancellor Kent:

"It may be received as a self-evident proposition, universally understood and acknowledged throughout this country, that no person can be taken or imprisoned, or disseized of his freehold, or liberties, or estate, or exiled, or condemned, or deprived of life, liberty, or property unless by the law of the land, or the judgment of his peers. The words, by the law of the land, as used in Magna Charta, in reference to this subject, are understood to mean due process of law. That is, *by indictment or presentment of good and lawful men.*"—2 *Com.* 13.

Now in most of the cases which will arise, under the fugitive slave law, there will be a seizure under a warrant; and in *all* the cases, the questions both of property and of liberty will necessarily be involved. In every case, the claimant will aver property in the respondent, and will seek to deprive him of his liberty. The respondent will deny the claim of property, and will seek to retain his liberty.

Now, suppose a man to have lived in Boston or New York for twenty years; to have contracted marriage; to have bought and sold; to have hired himself out to others, and to have hired others to serve him; to have pleaded and been impleaded in the courts; to have voted at elections, and to be, in all respects, as free by the constitutions of Massachusetts and New York as the Governors of those States themselves; and suppose further, that this man is suddenly seized and taken before a commissioner, to be adjudged the property of another man like himself, with no chance of revising the decision, or of having a new trial, to be placed in duress, and to be transported by force, and against his will, to a distant State, under a claim that he is a slave, and an adjudication that such claim is true;—suppose all this, I say, and then answer me this simple question, Has or has not such a man been "deprived of his liberty?" In other words, does such a man retain his liberty? As he is borne away by force, and against prayers, and tears, and struggles, does he remain free? Can a man be adjudged a slave; held, coerced, beaten as a slave; with all his powers and faculties of body and mind subdued and controlled as a slave's, and yet possess or retain liberty? If such a proceeding does not deprive a man of his freedom, by what means can he be deprived of it? What *more* would you do to deprive him of it? Would binding him out to service for life deprive him of it? This declares that he owes service for life. Would imprisonment deprive him of it? This imprisons him, and makes the man his keeper who is interested to make that imprisonment perpetual in himself, and descendable to his children.

Is not perpetual imprisonment of the nature and substance of punishment,—of the severest punishment? The Constitution has provided that "cruel and unusual *punishments* shall not be inflicted," even for the perpetration of the worst of crimes; yet here is a case where the most cruel of punishments, or of privations, may be inflicted without even a charge of crime. And the argument is, that this form of punishment may constitutionally be inflicted, because it was so inconceivably atrocious and diabolical, that the Constitution did not prohibit it,—because the Constitution only prohibited "cruel and unusual punishments" *for crimes*, and not for having a dark skin.

Does any one say that a victim of this law has not been "deprived" of his liberty, because he may sue for it, and possibly recover it, in the courts of the State to which he is carried? I reply, that it would be just as good an answer to say, that he may possibly recover his liberty by escape, or possibly his master may emancipate him, or possibly a St. Domingo insurrection may break out, or possibly the walls of his prison-house may be shaken down by an earthquake, and he may go forth like Paul and Silas; and therefore he is not deprived of his liberty by being enslaved. Neither of these events would have the slightest legal relation to the proceedings which did enslave him. Neither of them would be retroactive, undoing or annulling the past. Enslavement and liberty being incompatible, when he suffers the first, though but for an hour, he is deprived of the last. The moment he should arrive within the limits of a slave State, that moment he would be in the same condition as three million other fellow-bondmen; and it would be just as rational to say that they have never been deprived of liberty as that he has not. When our Government made war upon Algiers, ransoming American captives from their horrible bondage and restoring them to their homes, did it annihilate the preëxisting fact that they had been enslaved? Did it enable or authorize the historian to say that they had never been *deprived of their liberty?* Had Algiers been "reannexed," as one of the States of this Union, could she have said, "We have not broken the constitution, because these men are free again? I affirm then, that when a man in Massachusetts, who by the constitution of Massachusetts is free, is adjudged to be a slave, is transported as a slave, and held as a slave, in a southern State, though it be but for a single day, he is deprived of his liberty. That very thing is done to him which the Constitution says shall not be done but by a jury of his *peers*.

But a question of PROPERTY is involved as well as a question of liberty. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Now, sir, in regard to this important clause in the Constitution, I propose to demonstrate the three following propositions:

First: The claim, made before a competent magistrate, for a "person held to service or labor,"

is, in view of this constitutional provision, a "suit."

Second: It is a "suit at common law."

Third: It is a suit at common law "where the value in controversy exceeds twenty dollars."

As a law term, the lexicographers define the word "suit" to mean "an action or process for the recovery of a right or claim; legal application to a court for justice; prosecution of right before any tribunal; as, a civil *suit*, a criminal *suit*, a *suit* in chancery."

Blackstone says, "In England, the several *suits*, or remedial instruments of justice, are distinguished into three heads,—actions personal, real, and mixed."

"Suit" comes from "*secta*," and *secta* from *sequor;* and the phrase "to bring suit," denoted anciently, to bring *secta*,—followers, or witnesses, to prove the plaintiff's demand. The scope of the word is now enlarged, so that it embraces the written forms by which an action is instituted, as well as the proof which sustains it.

We are not, however, confined to the authority of the dictionary. The Supreme Court, in the case of *Cohens* vs. *Virginia*, 6 Wheat. 407, where this very word "suit," as it occurs in the Constitution, was the subject of consideration, defined it as follows:

"What is a *suit*? We understand it to be the prosecution, or pursuit, of some *claim*, demand, or request. In law language, it is the prosecution of some demand in a court of justice. 'The remedy for every species of wrong, is,' says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' The instruments whereby this remedy is obtained, are a diversity of *suits* and actions, which are defined by the Mirror to be 'the lawful demand of one's right;' or, as Bracton and Fleta express it, in the words of Justinian, '*jus prosequendi in judicio quod alteri debetur*,'—(the form of prosecuting in trial, or judgment, what is due to any one.) Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a right.

"To commence a suit, is to demand something by the institution of process in a court of justice; and to prosecute the suit, is, according to the common acceptation of language, to continue that demand."

Now let me take the different clauses of this definition, and see if every one of them does not necessarily include the demand made by a slave-claimant against the alleged slave.

"We understand a suit," say the court, "to be the prosecution or pursuit of some *claim*, demand, or request." Here, then, according to the Supreme Court, a *suit* is the prosecution of some *claim;* and, according to the very letter of the Constitution, the fugitive slave is to be delivered up, on *claim*. The slave, then, can be constitutionally and legally "delivered up" in no other way than "on claim," by "suit."

Again, say the court: "In law language, it [a suit] is the prosecution of some demand in a court of justice." When legal process is instituted for the recovery of a slave, is it not the prosecution of a demand? And will any one be rash enough to say that a man ostensibly free,—free according to all legal presumption,—can be "delivered" over to bondage for life, without the intervention of "a court of justice?"

To proceed with the opinion of the court: "The Mirror defines a suit to be 'The lawful demand of one's right;' or, as Bracton and Fleta express it, in the words of Justinian, it is the power of prosecuting in trial, or judgment, what is due to any one." Here service is alleged to be due; and the one who is said to owe that service is "prosecuted by trial and judgment" that he may render the service claimed.

"To commence a suit is to demand something by the institution of process in a court of justice; and to prosecute the suit is, according to the common acceptation of language, to continue that demand." In appealing to a court for the possession of an alleged fugitive, is not something "demanded?" And what is the warrant that is issued for his arrest but the "institution of process?"

If any one, then, will show that a "claim" for an alleged fugitive, by process of law, to be followed up by proof in support of the claim, and to be consummated by judgment, is not a "suit," he must show that it is not "the prosecution or pursuit of a claim;" he must show that it is not "the prosecution of some demand in a court of justice;" he must show that it is not "the lawful demand of one's right;" nor "the power of prosecuting in trial or judgment;" and finally, he must show that it is not "to demand something by the institution of process in a court of justice," and then "to continue that demand" until judgment is rendered for or against him.

But should the claimant of a fugitive slave show any one of these things, he would show himself the way out of court.

And this brings me to the *second* proposition, namely:

The claim for a person "held to service or labor" is, in view of the Constitution, a "*suit at common law.*"

In a decision bearing directly on the right to a trial by jury, the Supreme Court has defined the phrase "suits at common law," in special reference to its meaning in the seventh amendment to the Constitution, where the right to such trial, "in suits at common law," is secured. These are their words:

"It is well known, that in civil causes, in courts of equity and admiralty, juries do not intervene; and that courts of equity use the trial by jury only in extraordinary cases, to inform the conscience of the court. When, therefore, we find that the [7th] amendment requires, that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that this distinction was present to the minds of the framers of the amendment. By *common law* they meant, what the Constitution denominated in the third article 'law;' not merely suits, which the *common* law recognized among its old and settled proceedings; but suits, in which *legal* rights were to be ascertained and determined, in contradistinction to those in which equitable rights alone were recognized, and equitable remedies were administered, or in which, as in the admiralty, a mixture of public law, and of maritime law and equity, was often found in the same suit. Probably there were few, if any, States in the Union, in which some new legal remedies, differing from the old common law forms, were not in use; but in which, however, the trial by jury intervened, and the general regulations, in other respects, were according to the course of the common law. Proceedings in cases of partition, and of foreign and domestic attachment, might be cited, as examples variously adopted and modified. *In a just sense, the amendment, then, may well be construed to embrace all suits, which are not of equity or admiralty jurisdiction*, WHATEVER MAY BE THE PECULIAR FORM WHICH THEY MAY ASSUME TO SETTLE LEGAL RIGHTS."—*Parsons vs. Bedford*, 3 *Peters' Rep.*, 456-37.

Here the court say, that the term "common law," in the seventh amendment, meant what the Constitution denominated in the third article, "law." The word "law," which is here referred to, as contained in the third article, occurs

in the following sentence: "The judicial power 'shall extend to all cases, in *law* and equity, arising under this Constitution, the laws of the United States," &c. And the court declare that the constitutional right to a jury trial embraces "not 'merely suits, which the *common* law recognized 'among its old and settled proceedings, but suits 'in which *legal* rights were to be ascertained and 'determined," in contradistinction from equity and admiralty cases.

And in the last sentence of the decision quoted, the court expressly say, that the seventh amendment embraces "*all suits which are not of equity or admiralty jurisdiction*, WHATEVER MAY BE THE PECULIAR FORM WHICH THEY MAY ASSUME TO SETTLE LEGAL RIGHTS." The court say "ALL." After excepting cases of equity and admiralty jurisdiction, they declare that the phrase "suits at common law" embraces *all* the rest. They recognize no hybrid class, not included under one or another of these heads.

Now it has been proved above, that a warrant for the arrest of an alleged fugitive, together with the allegations and proofs under it, constitute a "suit." And can anything be more clear, than that a proceeding which decides the issue, whether a man "owes" or does not "owe;" which decides the issue, whether a man has "escaped" or has not "escaped;" and which, as the legal consequence of these decisions, delivers one man into the custody of another as his slave, or enlarges one man from the custody of another because he is not his slave, is, "whatever peculiar form it may assume," a proceeding "to settle a legal right," —one of the highest and most important legal rights that appertain to a man? It is not, in legal language, a right "of equity or admiralty jurisdiction," but exclusively and purely a *legal right*, and nothing else.

The court declare this to be so, *whatever peculiar form the process may assume*. But what gives peculiar pertinency and stringency to this decision of the court is, that, at common law, there was an original writ, called the writ *de homine replegiando*, —the writ of personal replevin, or for replevying a man,—by which the question of property in a man might be determined. It was a writ which the party could sue out of right; one to be granted on motion, without showing cause, and which the court of chancery could not supersede. In the very language of the Supreme Court, it was a writ recognized by the common law, and is to be found "among its old and settled proceedings." The form of it is contained in that great arsenal of common law writs, the *Registrum Brevium*.

"A man," says Comyn, "may have a *homine replegiando* for a negro, or for an Indian brought by him into England and detained from him; or it may be brought by an infant against his testamentary guardian; or *by a villein against his lord*."
—(*Dig., title Imprisonment, L.* 4.)

If this writ could be brought "for a negro," or "for an Indian," by a man who had introduced him into England, and from whom he had been detained; and if, on the other hand, it could be brought by the negro, or by the Indian to gain his freedom, as was clearly the case, then it follows that the question of a right to a man, as well as that of human freedom, was a question familiar to the ancient common law, and for the trial of which a well-known process existed "among its old and settled proceedings." But this ancient writ, *de homine replegiando*, carries with it, as everybody knows, the trial by jury, as much as an action of assault and battery, or of assumpsit on a promissory note.

I have always understood, that before the Revolution, and before the framing of our Constitution, Comyn's Digest, from which the above citation is made, was a work of the highest authority. It must have been well known to all the lawyers in the convention. Could they have intended that the mere fact of claiming a man as a slave,—which claim might be made against a freeman, as well as against a slave,—should be sufficient to deprive him of this ancient muniment of the subject's liberty? It seems impossible!

But we are not left to the broad and general assertion, contained in the case of *Parsons* vs. *Bedford*, that the seventh article of amendment embraces all "suits" not of equity or admiralty jurisdiction, whatever the peculiar form which they may assume to settle legal rights. Authority exists still more pointed and direct. In *Baker* vs. *Riddle*, Mr. Justice Baldwin, one of the judges of the Supreme Court of the United States, held that it was not in the power of Congress to take away the right of trial by jury, as secured by the seventh amendment, neither—

"1. By an organization of the courts in such a manner as not to secure it to suitors; nor,

"2. By authorizing the courts to exercise, or their assumption of, equity or admiralty jurisdiction over cases at law."

"This amendment," says he, "preserves the right of jury trial against any infringement by any department of the Government."—*Baldwin's Rep.*, 404.

Now, what are the tribunals created by the fugitive slave law but a new "organization of the courts?" or rather, the creation of new courts, "in such a manner as not to secure [the right of trial by jury] to suitors?" It creates tribunals unknown to the common law, and it purports to give them power over common law rights.

Having now proved, from the nature of the claim in controversy,—namely, the claim of one man to the personal services and the liberty of another man, and the counter-claim of personal liberty and of self-ownership,—that the right in dispute between the claimant of an alleged fugitive, and the person claimed, is a common-law right; and that *any* legal process to determine this right, "whatever form it may assume," is a "suit at common law," it only remains, under this head, to establish my *third* point; namely,

The claim to *any* person, as one "held to service or labor," always and necessarily presumes that "the value in controversy exceeds twenty dollars."

On this point direct authority may be found in the case of Lee *vs.* Lee, 8 Peters' Rep., 44 This was an appealed case, where by law no appeal could be taken unless "the value in controversy" should be "one thousand dollars or upwards." It was objected that the appellants,—the petitioners for freedom,—were not worth a thousand dollars. But the court said:

"The matter in dispute, in this case, is the freedom of the petitioners. The judgment of the court below is against their claim to freedom; the matter in dispute is, therefore, to the plaintiffs in error, the value of their freedom, *and this is not susceptible of a pecuniary valuation*. Had the judgment been in favor of the petitioners, and the writ of error brought by the party claiming to be the owner, the

value of the slaves as *property* would have been the matter in dispute, and affidavits ought be admitted to ascertain such value. But affidavits estimating the value of freedom are entirely inadmissible, and no doubt is entertained of the jurisdiction of the court."

Suppose there are two claimants for the same alleged fugitive. If his market value exceeds twenty dollars, both of them have a clear right to the trial by jury. And can it be that a man's right to his own *freedom* cannot be tried by a jury, when, if two men dispute about his *value*, each may claim the jury trial and cannot be denied?

On the three points, then, what constitutes a common-law or "legal right;" what constitutes "a suit at common law," and what constitutes a "value which exceeds twenty dollars"—namely, the personal liberty of any human being, though he be an infant just born, or a driveling idiot, or be stretched upon his death-bed with only another hour to breathe,—I trust I have made out a case which entitles a party to trial by jury under the Constitution of the United States.

I might here rest the argument, feeling that, from authority and from reason, from the old and time-honored principles of the common law, as well as from those interpretations of the Constitution which have been given by the Supreme Court, my conclusions are impregnable. But I proceed to notice some of the points taken on the other side; and if I shall occasionally advert to positions that are obviously too shallow and fallacious for discussion, it is only because I wish to omit nothing which any one may think of importance.

It is alleged that the whole force of the above argument, otherwise conclusive, is annulled, because a slave is no party to the Constitution, is not under its protecting shield any more than a horse or an ox, and therefore any provisions however strong securing the jury trial are inapplicable to him. A slave, it is said, is not one of the "people" by whom and for whom the Constitution was formed. He is an outlaw, and an outcast. He has no inherent or inalienable rights *as a man*. What he has, he has *ex gratia*, by the good will of those who own him, body and soul, and who are graciously pleased to forego some of their legal rights from generosity in themselves, and not from justice to him.

Now, as it seems to me, a most obvious principle confutes this argument utterly. By the laws of the free States, we know no such being as a slave. Our courts, in their functions as State courts, do not understand the meaning of the word *slave*. To talk to them in that capacity, about a slave or slavery, is talking to them in an unknown tongue. In the eye of the legislators of the free States, and in the eye of the courts of the free States, so far as their domestic polity is concerned, there can be no such creature as a slave. The constitution of every free State in this Union must be first altered, before any such being as a slave, or any such condition as slavery, can be recognized under them, as State authorities.

So the Constitution of the United States creates no slaves, and can create none. Nor has it power to establish the condition of slavery anywhere. And I hold further, that if the Government of the United States, by escheat, by purchase, by execution against a debtor, or in any other way, should become possessed of a slave, that moment he would be free. The Government of the United States can neither hold a slave, nor make valid title to a slave by sale. It is a Government whose powers consist of the grants that have been made to it; and nowhere, by no competent party, has any such grant ever been made.

The relation of the Government of the United States to slavery consists in this, and in this alone: that when this Government was created, slavery existed in a portion of the States; and by certain provisions in the Constitution, the existence of this slavery was recognized, and certain rights and duties in relation to it were respectively acknowledged and assumed. But the Government of the United States has no more power to turn a freeman in a free State into a slave than it has to turn a slave in a slave State into a freeman.

The officers of the State Governments being sworn to support the Constitution of the United States, the Governments of the free States are implicated indirectly in the matter of slavery, as the Government of the United States is directly, and not otherwise.

Both by the Constitution of the United States, then, and by the Constitution of all the free States, every man found within the limits of a free State *is prima facie* FREE. No matter what complexion he may wear, or what language he may speak, he is a free man UNTIL some other civil condition is proved upon him, or until he forfeits his freedom by crime. Every man, therefore, in any one of the free States of this Union, has a right to stand upon this legal presumption, and to claim all the privileges and immunities that grow out of it, *until* his presumed freedom is wrested from him by legal proof. It is the most cruel of sophisms to say, that because a man is *claimed* as a slave, he is not under the protection of the Constitution, and then *to prescribe a base mode of trial for him, by which he can be proved the thing he is claimed for*. On the subject of freedom or slavery, we of the free States know of but one class of men living amongst us. That class is free. There is no such class as slaves known to our laws. Nor is there any intermediate class, who may be presumed to be slaves on account of their color, or who may be proved to be slaves by less evidence, or by an inferior kind of evidence, because of color.

No axiom is more universal or indisputable, than that the right to freedom in a free State and the right to be held and treated by the courts as a freeman, has no relation to complexion. If, then, these rights have no relation to complexion, *all* white men may be arbitrarily presumed to be slaves, and be deprived of the form of trial, secured to them by the Constitution, just as well as any colored man can be. The former may just as well be proved to be slaves, on dangerous, or on inferior, or on insufficient evidence, as the latter. No; the liberty to which every man, of whatever color, in a free State, is *prima facie* entitled, invests him with its protection, and this investiture cannot be stripped from him but by the judgment of his peers or the law of the land,—which, as we have before seen, means trial by jury.

Any other interpretation assumes this as a postulate, namely, that there is a higher or surer kind of trial applicable to freemen, and a lower or inferior mode of proceeding applicable to slaves

And the inhuman inference from this assumption is, that any man against whom a ten dollar commissioner may issue a warrant as a possible slave, shall forthwith be subjected to the slave's mode of trial, and be utterly deprived of the freeman's mode of trial; or, at the best, that he shall be sent away a thousand miles, into another jurisdiction, there only to have the slave's mode of trial. According to this form of proceeding, the first thing which the commissioner says to his victim is: "Being a slave you must be tried in a summary manner." "But I am not a slave," asseverates the respondent, "and I claim to be tried by my peers under the guaranties of the Constitution." "You are no party to the Constitution," rejoins the commissioner, "and, therefore, not entitled to its shelter. The Constitution was made by the people, and for the people, and you are not of them." Then says the victim: "If I could have the trial due to a freeman, I could prove myself a freeman; but under the form of trial awarded to a slave, I may be proved a slave; so that my fate is made to depend not upon my rights, but upon your form of proceeding." "Even if so," retorts the mercenary minister of the law, "it is but an imperfection incident to human institutions. Is not one man's property sometimes taken to pay another man's debts? and is not one man sometimes executed for another man's murder? Why, then, should the course of justice be arraigned, if a free man, instead of a slave, is sometimes consigned to bondage?"

Sir, the unescapable distinction lies here, that if there be any difference between the kind or degree of proof applicable to a freeman and that applicable to a slave, then, in a free State, you must prove a man to be a slave by freeman's proof. If cast on such proof, then, and not till then, does he become the subject of slave proof. Anything else under the form of justice is a mockery of justice. No man will say that the "claim" imposes any disability upon the person claimed, or takes away from him any rights. A man who has a presumptive right to his liberty has a perfect right to all the means to prove it. The "claim" imposes no obligation to deliver up, but the proof under the claim; and this proof in a case of "life, liberty, or property," is to be judged of by a jury. The real question is, *who* is to be delivered up, a slave or a freeman? If the person arrested is prejudged to be a slave, then there is no need of a trial at all. If he is *prima facie* a freeman, then he is entitled to the most perfect mode of trial.

By the theory, I believe, of all the slave States but one, every person of maternal African descent is presumed to be a slave. As such, his civil condition is fixed, special tribunals are constituted to try him, and he is subjected to rules of evidence unknown to the common law and never applied to freemen. Now it would be but the same kind of legal absurdity and preposterousness, for the presumptive slave, in a slave State, to demand the form of trial, the tribunal and the evidence, which there appertain to a freeman, as it is to subject the presumptive freeman in a free State, to the form of trial, the tribunal and the evidence which appertain to a slave.

The iniquity of the law is, that it enables a perjured or fictitious slaveowner, on proofs most easily fabricated, to seize any individual in a free State, and to *prejudge* him to be a slave, by the very form of trial which this law authorizes. On the contrary, nothing can be more clear, than that the civil condition or *status* of every man found in a free State is that of a free man. His living under a free constitution, without anything more, invests him *prima facie* with this character. Until divested of this character, he continues presumptively a free man. While such, he is entitled to every security which the Constitution gives to a free man. How, then, can he be subjected to a trial which reverses the whole law of presumption in favor of freedom, and which presumes that he is a slave to begin with? This is not only anticipating the judgment at the commencement of the proceedings, but it is anticipating the worst judgment that can be passed; and, by anticipating, procuring it; as prophecies often procure their own fulfillment.

I put this case, and I challenge an answer that shall refute or admit my conclusion: If any one man in a free State can be seized and suddenly transported into bondage under this law, *then every other man also can be; and there is not a single person left in any free State who has a right to a trial by jury to save him from slavery.* I am not now speaking of the special danger to each particular individual, but of the principle that embraces us all. Under the most oppressive of tyrannies there are persons who are not in danger. But under such a law, who can tell what may happen to men arrested away from home, to unprotected women, and to helpless children? Do you say that a public sentiment and a public watchfulness exist, which would protect the whites, the female, and the child? I reply that we possess our right to protection under the Constitution and laws, and are not to be turned over to public sentiment or public watchfulness in order to enjoy it.

Suppose an analogous law to be passed respecting debtor and creditor. Suppose a law to provide some new mode of proceeding by which the indebtedness of a defendant should be so far presumed as to subject him to an inferior kind of defence, or to transfer his case to another kind of tribunal, as from jurors to arbitrators, to be selected by the plaintiff himself. Who is there, though through all his life he had fulfilled the apostolic injunction to "owe no man anything," that might not be cast in an action that would strip him of all his fortune?

The law punishes murder by death. Could it know with omniscient certainty beforehand *who is a murderer*, it might take from him the trial by jury without offence to the eternal principles of justice. It is because the law cannot know with infallible certainty, beforehand, who is a murderer, that it provides the trial by jury to determine the question. Just so, because human tribunals cannot know with certainty who is a slave and who is free, the Constitution gives the trial by jury, before any man in a free State shall be deprived of his freedom. And the argument that if a man be wrongfully consigned to bondage, he may be afterwards restored to freedom, is as audacious and as tyrannical as to say that an innocent man may be hung and sent into another world as a felon, because sometimes the dead have been restored to life.

It is no answer to this view of the case, to say that all processes, whether civil or criminal, are initiated on the supposition that a pecuniary liability exists, or that a wrong has been done.

Everybody knows that no presumption of this kind follows the plaintiff, or the Government, into court. When there, in the presence of the law, the plaintiff must establish his claim affirmatively. The possible debtor is no longer a debtor. So the Government must prove the guilt of the man it has arraigned. The possible criminal is no longer a criminal. In the eye of the law, he is as innocent as the unborn child. When they claim the trial by jury, neither plaintiff nor prosecutor can say, You are not entitled to this form of trial, because you *are* presumptively a debtor, or presumptively an offender. Yet this is precisely, and *in totidem verbis*, what the pro-slavery argument says to the respondent when he is brought before the commissioner and put in peril of his freedom. In both the cases supposed, such a doctrine would take away a man's rights in the most odious manner, by taking away the legitimate and constitutional means of defending them.

For the purpose of determining by suit or by prosecution whether a man is a debtor or is an offender, a suit or a prosecution may be commenced against him, but never for the purpose of raising a presumption that he is either the one or the other, or to deprive him of any evidence to which an unindebted or an innocent man is entitled, or to change the tribunal which is to try the question of indebtedness or of guilt. If attachment on mesne process, if even indictment by the grand inquest for the county, does not deprive a man of his right to a trial by jury, how can so great a natural wrong be constitutionally inflicted by the warrant of a commissioner?

The presumption that a colored man is a free man in the free States, is just as strong as that a man of pure, unmixed, Anglo-Saxon blood is a free man in the slave States; and would they tolerate the doctrine for a moment that any perfectly pure-blooded white person could be transformed into a slave, and as such sent from his own State into another, under this law?

But to the argument, that the Constitution and the law of 1850 apply only to slaves, and that because slaves are not parties to the Constitution, they are not under its protection, and so not included in the provision for jury trial, there is another answer perfectly fatal. It is this: the Constitution does not enumerate the various classes of criminals who shall be entitled to trial by jury; but with the exception of cases of impeachment, and cases in the military and naval service, it expressly declares as follows: "The trial of all crimes shall be by jury." And also, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury," &c. The right, therefore, is not made to depend upon the *classes of persons* on trial; but upon the nature of the charge brought against them. The Constitution does not say that freemen shall be tried in one way and slaves in another; but its language is, "all crimes," and "all criminal prosecutions;" so that it embraces every person *who is prosecuted*, whether free or slave, citizen or foreigner, Jew or Gentile. If an Englishman or Frenchman were to be tried here for murder, how would the whole world deride the suggestion that he should not have a jury trial, because he is a foreigner, because he is not one of the "people," and so not a party to the Constitution?

So the Constitution does not say,—in suits between merchant and merchant, or between landlord and tenant, and so forth, "the right of trial by jury shall be preserved;" but it says: "*In suits at common law*, where the value in controversy shall exceed twenty dollars." The right is not determined by the character of the litigants, but by the nature of the action. The Constitution does not care who the parties are,—man, woman, bond or free, it is all the same. As soon as parties appear upon the record, the right to the trial by jury attaches. The *suit*, and not the *civil condition* of the litigants who instituted or who defend it, tests and determines the jury question.

In the case of *Lee* vs. *Lee*, before cited, the law allowed an appeal only in case the sum in controversy should amount to $1,000. The appellant was of African descent, and therefore, within that jurisdiction, presumptively a slave;—not presumptively a freeman, as every man is in a free State;—and, if a slave, then he could own no property; for by the cruel law of slavery, every master may rob his slave legally of all that he earns, or finds, or otherwise receives. Yet the Supreme Court sustained the appeal. Why was not so astute an exception as this then taken?—an exception which, if they have a bar in Pandemonium, would have done honor to one of its counsellors. Why was it not said that a slave was no party to the law, and therefore not entitled to its provisions? No reason can be assigned why a slave is not as much under the protection of a constitution made for the "people," as under the protection of a law made for the "people." Yet here, even in the case of a presumptive slave, a right was acknowledged, which some freemen, in free States, deny to presumptive freemen.

I have here been combating the argument, that because the fugitive slave law is aimed at slaves, no freeman has any ground of complaint against it, even though he should be converted into a chattel under it. He must console himself, under the doom of interminable bondage, with the patriotic and pious reflection that he is only suffering, as an exception, to prove the general excellence of the law; and he must leave this consolation also to his enslaved children. For, in his case, it is said that eternal slavery is only one of those exceptions in the working of the law which prove the rule of its general excellence. This argument I hold to be eminently sophistical and cruelly oppressive. But if any one believes it to be a sound argument, then I hold him to all fair deductions resulting from it,—of which the following is clearly one:

On the same ground on which Congress passes a law for escaped slaves, let every free State pass a law for resident freemen. The presumption in every free State being, that all men within its borders are free, let every such State give the trial by jury, in all cases in which personal liberty is involved, to every one who shall ask for it, and who has not once had it in a litigation with the same party, on the same subject-matter. According to the argument I have been considering, no slaveholder can complain of such a law; for, by its very terms, it applies only to freemen. The law of Congress, applying only to slaves, and the supposed State law, applying only to freemen, there is no conflict between them. And if, by accident or mistake, any real slave should take shelter under such a State law, and should escape

a life of horrible bondage, it will be only one of those mistakes which may arise under the purest administration of justice. It will answer quite as well as its counterpart case, to stand as one of those exceptions in the working of a rule which prove its general excellence. If the occasional subjection of a freeman, instead of a slave, to all the horrors of bondage, constitutes no valid objection to the United States law, then surely the occasional enfranchisement of a slave from a bondage that was always unjust and cruel, should constitute no objection to the law of the free State. If this fugitive slave law continues for a single year, I hope every free State will pass a law inflicting condign punishment upon every man who directly or indirectly assists in sending any man into southern bondage, unless he can prove before a jury that the man so sent was a slave.

So far, I have considered the question, whether a fair interpretation of the Constitution does not secure the jury trial, in every free State to an alleged fugitive, and empower him to demand it as a matter of right.

But this is a strange question to discuss in a republican government. The proper question is, not whether the Constitution expressly *demands* the jury trial, but whether it will, by any fair implication, *allow* it. The only point which a republican judge or citizen can, with decency, make on this subject is: Does the Constitution forbid, prohibit, deny, such trial?—for, if it does not, then the jury should be granted of course. In a free country, under a free government, where the idea has become traditional, where the doctrine has become a household doctrine, that the trial by jury is the palladium of our civil and religious liberties, is it not amazing that we should find men who seem eager to avoid this form of trial, rather than zealous to grasp it? It is the saddest of spectacles; it argues the most mournful degeneracy, to see the children at this early day, from groveling notions of ambition and of wealth, abandoning those noble principles of freedom, for which their fathers so lately shed their blood. Wherever the Constitution allows the trial by jury, in a matter of human liberty, in Heaven's name, let us have it. Let Russia and Austria curtail and deny this privilege of freemen; let the tyrant, and the tyrant's minions among ourselves, explore the musty records of darker times, to find precedents against it; let them strive, by their shallow sophistries and plausibilities, to gloss over this ravishing of liberty and life from beings created in the image of God; but let every true Republican, whenever, in the disposal of these momentous interests, the Constitution will, by fair construction, sanction it, cling to the trial by jury, as to the only plank that will save him,—aye, the only one that will save the human race,—from being again ingulfed in the vortex of despotism. The enemy of the trial by jury, wherever human liberty is concerned, is the enemy of human liberty and of the human race. The friends of a repeal of this law, then, need not discuss the question whether the Constitution does expressly confer the right of trial by jury upon the alleged fugitive, for it is enough for them if the Constitution does not take it away.

It is worthy of remark, that in both of the bankrupt laws passed by the United States, it was expressly provided, that when the commissioners should declare any person to be a bankrupt, he should have the right to a trial by jury to annul their decision. Thus when the law proposed, not to appropriate a man's property, but merely to enable his creditors to receive it in payment of their debts, the jury trial was secured to him; but here, where the direct purpose is to strip a man of his liberty, and of his property in himself, the jury trial is denied.

This seems an appropriate place to consider the further irrelevant suggestion, sometimes obtruded, namely, that an alleged fugitive is not deprived of a trial by jury, because he may have it in the State to which he is carried.

Here, the pro-slavery advocate admits, at least for argument's sake, that the alleged fugitive has a right, at some time and somewhere, to the jury trial. If so, then there are numerous and powerful reasons why this trial should be had in the State in which he is found, rather than in that to which he may be transported.

1. Slaves are held to be personal property. Trover lies for their value where they have been unlawfully converted. Trespass is the remedy for an injury to them. According to the laws of all the slave States, they are the subject of larceny. Suits to recover them, or to recover damages for an injury done to them, are personal actions; and, in personal actions, it is required by all the precedents and all the analogies of the common law, that the action should be tried in the jurisdiction where the writ is served. By the common law personal actions are transitory. They are to be brought where the defendant resides; or, at least, where the property which is claimed lies. In the case of an alleged slave, both the defendant and the property are where *he* is found. According to the usages and principles of the common law, therefore, the trial should be there.

2. Before trial and judgment, the parties are like any other parties before the court, or they should be so. The claimant stands upon the merits of his claim; the respondent upon those of his defence. It may be inconvenient for a Texan claimant to prove his right to an alleged fugitive in Massachusetts; but it will be indefinitely more inconvenient for a citizen of Massachusetts to prove his freedom in Texas. If the trial is in Massachusetts, and the plaintiff prevails, he takes immediate possession of his slave, and is invested at once with all the rights which the rigors of the slave law so abundantly give. But if the trial is in Texas, whither the defendant has been forcibly exiled, and there *he* prevails, who is to reimburse or recompense him for his intermediate bondage; for being dragged from his home; torn from wife, children, and friends; for being plunged, perhaps for years, into the hell of slavery itself, with all the untold agonies of an apprehended slavery for life?

What Judge Story says respecting a trial for crime, applies with full force to a trial for liberty. "The object of this clause," says he, "is to secure the party accused from being dragged to a trial in some distant State, away from his friends, and witnesses, and neighborhood. Besides this," he continues, "a trial in a distant State or Territory might subject the party to the most oppressive expenses, or perhaps even to the inability of procuring the proper witnesses to establish his innocence." (3 *Com.* 654.) For "innocence" read *liberty*, and the argument in behalf of the alleged

criminal, becomes applicable to the alleged fugitive. And why should the alleged fugitive be treated less mercifully than the alleged felon?

If the trial, then, is where all the practice and principles of the common law indicate that it should be, no great or irreparable injury is done; no inconvenience even is suffered beyond that which is always suffered in enforcing a claim in a foreign and distant jurisdiction. But if a freeman is carried away, a grievous and intolerable wrong is done; a wound is inflicted which mortal medicaments cannot heal, nor the longest continued punishment of the malefactor ever expiate.

3. By transferring the trial to the place of the claimant's domicil, an effective, and, as it seems to me, a most iniquitous advantage is given him, in regard to evidence, while the respondent is subjected to cruel disabilities. By the laws of all but one or two of the slave States, persons of African descent, whether slave or free, are declared incompetent witnesses against white men. The freeman, then, by being removed as a fugitive into a slave State, may lose his evidence, which, under such circumstances, is the loss of his liberty. This violation, therefore, of the principles of the common law, in regard to the place of trial, is, to him, of the most momentous consequence. It is not true, then, in any just sense, that the trial by jury is still "preserved" to the alleged fugitive, notwithstanding his removal to a slave State. The common law trial, as inclusive of the right to adduce common law evidence, is not "preserved."

4. But not only is the evidence different, but, in some of the slave States, *the law itself is different;* so that one man may carry another by force into a jurisdiction where the law will account him a slave, when, had he been tried where he was found, the law would declare him free,—the facts in both cases being the same.

Take the law of Kentucky, for instance,—and I refer to this State because its slave code is of a milder type than that of most of the southern States, its dreadful rigors being mitigated by an infusion of more humanity.

By the laws of Kentucky, a master may carry a slave *in transitu*, through a free State, or he may allow his slave to go temporarily into a free State, without a forfeiture of the legal right to hold him. Graham *vs.* Strader & Gorman, 5 Ben. Munroe, 173, (1844;) Davis *vs.* Tingle *et al.*, 8 Ben. Munroe, 545, (1848;) Collins *vs.* America, 9 Ben. Munroe, 565, (1849;) Bushe's Reps. *vs.* White, 3 Munroe, 104; Rankin *vs.* Lydia, 2 A. K. Marshall, 468, (1820.)

In Massachusetts certainly, and I suppose in most of the northern States, all such cases would be decided in favor of the respondent.*

Now, what greater outrage can be inflicted upon a man than to seize, and bind, and carry him into a foreign jurisdiction, where not only is the evidence different by which his rights may be proved, but where the law also is different, by which his rights are to be adjudicated. In Holland, the killing of a stork once was, if it be not now, punishable with death; because this bird devours the animals that would otherwise bore through and undermine its ocean-barring dikes. In a neighboring country, the killing of a stork may not be merely blameless, but praiseworthy. What an atrocity it would be to seize a man in the latter country, and carry him to Holland to be tried and executed for doing an act which, according to the law of the place where he had a right to be tried, may have been not only innocent, but laudable! I leave you, sir, to make the application.

5. But what must shock every man who possesses any just appreciation of the value of human liberty, or has any just perception of the principles on which it is founded, is, that under the fugitive slave law, the plaintiff gets possession and control not only of the chattel, or article of property claimed, but of the defendant himself. He gets command, not only of the thing in litigation, but of the body and soul of the litigant. A Boston or New York merchant would consider it a grievous hardship, if a southern adventurer could go there and seize upon all his property, transport it to Mobile, or New Orleans, and compel the owner to follow it and try title to it, in the place of the captor's domicil. Still more grievous would the hardship become, if, under the new jurisdiction, the defendant might be deprived of the evidence which, at home, would be decisive of his rights, or find himself controlled by adverse laws which he never had helped to frame. But what an extreme of barbarous tyranny would it be, if, beyond all these enormities, the southern plaintiff could seize him too,—the defendant himself,—the alleged debtor,—and grasp him in his own iron hand, obtaining supreme control over his body by force, and over his mind by fear; could command his powers of locomotion, so that he could go only where the will of his master would permit; could control his speech and his vision, so that he could consult with no counsel, and could see no friend but such as were in his master's pay; and, to enforce his authority, could imprison him, and starve him, and scourge him, and mutilate him, if he but so much as uttered a whisper that he had a right to have a trial by his country, or breathed an audible prayer to God to break the fetters of his iniquitous bondage.

To tamper with the witnesses of the adverse party, or endeavor to suborn his counsel to violate their duty to their client, is not only an act of the grossest baseness, but would subject the offender to penal retribution. Yet what need would there ever be of corrupting witnesses or suborning counsel, if a party could get bodily possession and absolute control of his antagonist himself?

Does not every one see that, in ninety-nine cases in a hundred, a control over the defendant's person and will would be a control over his case? His rights would be lost in his enforced disability to defend them. You might as well put out a man's eyes, and then talk of his right in the common sunlight. In Baltimore, or Louisville, a kidnapped freeman might find an opportunity of self-redemption; but such a captive will never be carried to Baltimore or Louisville. He will be sent to some interior region, perhaps fifty miles from any court, or the residence of any counsel, where he may never have an opportunity to speak to a white man unless it be to a taskmaster, who is paid to guard and to silence him.

The authors of the Federalist deemed the principle of excluding an interested party from all power of deciding his own cause, to be so important, that they laid down the following doctrine: "No man

* Such also is the law in Louisiana. See Louis *vs.* Marot, 9 Louis. Re., 473; Smith *vs.* Smith, 13 Louis. Re., 441.

ought certainly to be a judge in his own cause, or in any cause, in respect to which he has the least interest or bias."—No. 80. Yet the only chance which the fugitive slave law allows to a freeman, when carried into bondage, is that which he may exercise, while under the absolute control of his robber master.

But more than this. The law imposes no obligation upon the claimant to carry his victim to the State he is charged to have escaped from. A man charged to have escaped from Texas may be carried to Florida. Nay, he may not be carried to any State in this Union. He may be sent to Cuba or Brazil; beyond hope, and into the outer darkness of despair.

All the arguments which I have ever heard, or seen, on this point, gratuitously *assume*, that the person reclaimed and transported will have an honest master, be surrounded by kind friends, and have a lawyer at hand whom he can consult with every day, and money in his pocket to fee him. Would such be the case of a kidnapped freeman? Would a wretch, vile enough to rob a man of his liberty, carry him five hundred or a thousand miles, and then go to a county town during a session of the court, and give his pretended slave a purse of money with which to fee a lawyer, for investigating his right to freedom? No! the man who knows, or suspects, that he has seized a freeman, or that his victim even believes that he is a freeman, and will put him to the trouble and expense of a trial, will plunge that freeman into the abyss of bondage, where no ray of hope may ever reach him, and where his voice will be hushed as in the silence of death.

Another objection to the fugitive slave law is, that it confers judicial power upon persons who are not judges. Here we are not left to inference or construction, but can stand on the plain words of the Constitution. The third article declares:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."—*Art.* 3, § 1.

Here I hold it to be clear beyond dispute, that the "judges" mentioned in the second sentence of the above section are the members of the "Supreme Court" and "inferior courts" mentioned in the first section, and no other. If so, then there can be no doubt about the tenure of their office, and the mode of their appointment, compensation, and removal.

By sec. 2, of art. II, the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint" "judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

The appointment of *no* judge of *any* court is "otherwise provided for in the Constitution;" and therefore the appointment of *all* the judges in whom "the judicial power of the United States is vested" belongs by the Constitution to the President and Senate; and this "judicial power" cannot be delegated to, nor exercised by, any persons not so appointed.

The courts may appoint "inferior officers," such as clerks, criers, or masters in chancery; but these are not "judges;" nor would any one of them singly, nor any number of them associated together, constitute a "court," within the meaning of the first section of the third article. Were such the case, then *they* might have power to appoint "inferior officers," and so on, by sub-delegation, indefinitely.

The Constitution also defines what it means by "judicial power." It says: "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States," &c.

Now, my position is, that the fugitive slave law requires the creation of a large body of officers who are not "judges," but whom it purports to invest with "judicial powers."

They are not "judges," because they are not nominated by the President and confirmed by the Senate, as all "judges" must be.

They are not "judges," again, because, if they were, they must hold their offices "during good behavior." But the commissioners may be unmade on the day they are made. "Judges" can be removed only by conviction, on impeachment. Commissioners may be removed by the court that appointed them. Not the President, nor the Senate, nor both together, can remove a judge, unless by the initiatory and concurrent action of the House of Representatives. An "inferior court" can eject a commissioner without notice.

Even if Congress had declared by express words, that the commissioners appointed by the circuit and district courts should be taken and held to be "judges," it would not make them so; for Congress cannot delegate any power to judges to appoint judges, nor to courts to make courts. If Congress could not do this by express enactment, how can it do it by implication?

Commissioners are not "judges," also, because no person can be a "judge" who is not entitled, "at stated times, to receive for his services a compensation which shall not be diminished during his continuance in office."

This provision necessitates the conclusion that all "judges" must be entitled to salaries payable periodically. These salaries are in no case to depend upon the *amount* or the *quality* of their labors;—far less, if possible, upon their deciding the cases that are brought before them for the plaintiff, or for the defendant. One "judge" may have an eviable reputation for talent and integrity, and thus attract suitors to his court. Another may be as corrupt as Lord Jeffries, and repel all honest litigants from him. But in either case, he has a right to a compensation which shall not be diminished during his continuance in office. Each year gives him a definite, unchanged sum of money.

But the commissioner is paid by fees, and the amount of his fees depends partly upon the number of cases he decides, and partly also upon the party in whose favor he decides. If he decides that a man is free, he receives five dollars. If he decides that he is a slave, he receives ten. If the commissioner is acceptable to the slave hunter, suitors multiply. If obnoxious to them, his docket is bare of a case. He is entitled to his compensation, not "at stated times," but on the determination of each case. His compensation may be di-

minished, or it may cease altogether, during his continuance in office. Each year does not give him any definite, unchanged sum of money.

The "judge" must be paid by the Government, and is independent of all the parties before his court. The commissioner is never to be paid by the Government, but is wholly dependent for his fees upon the claimant whose case he tries. The Government guaranties the payment of the "judge," but it can never inquire or know whether the commissioner be paid or not.

By the sixth article of the Constitution, all "judicial officers" must make oath or affirmation that they will support the Constitution. But there is no law requiring these commissioners to take an oath; and as a matter of practice, in some parts of the country at least, it is known that they take no such oath.

Now, by the act, a portion of the "judicial power" of the United States, the *whole* of which is, by the Constitution, vested in one "supreme court," and in "inferior courts," is given to the commissioners. The fourth section says they "shall have concurrent *jurisdiction* with the judges of the circuit and district courts of the United States." If the power of these courts, in the premises, is judicial, then the power of the commissioners, being the same, is judicial.

The Attorney General of the United States, in a written opinion given by command of the President of the United States, declares that this power, so given to the commissioners, is judicial. The following are his words:

> "These officers, [the commissioners,] and each of them, have judicial power, and jurisdiction to hear, examine, and decide the case."
>
> "The certificate to be granted to the owner is to be regarded as the det and judgment of a judicial tribunal having competent jurisdiction."
>
> "Congress has constituted a tribunal with exclusive jurisdiction to determine summarily, and without appeal, who are fugitives from service." "The judgment of the tribunal created by this act is conclusive upon all tribunals."

Such is the opinion of the Attorney General of the United States, given upon the precise point, by order of the President of the United States.

But the point needed no authority to sustain it. It results inevitably from the very nature of the power conferred by the law. The decision of the commissioner is to be *final* and *conclusive*, and the subject-matter of the decision is liberty and property. The case cannot be reheard or reëxamined by any judge, or by any court, of any State, or of the United States. The decision acts *in rem* and *in personam*. It delivers the property to the claimant, and puts the body of the defendant into his custody. From that moment, if the law has any validity, the defendant is the slave of the plaintiff, by force of a "judicial" decision. The plaintiff thenceforth may control his actions, his words, his food, his sleep. If he chooses to exercise his authority in such a way, he can order his victim to carry him home on his back, and make him bear the loathsome burden of his person as well as of his will. Now, to say that the power which effects these results is not a judicial power, is to do violence to language, and to commit a fraud upon the inherent nature of ideas. In no case known to the common law, or indeed to any other law, is a plaintiff invested with *full* rights, except after *final* judgment.

If, then, this power is a "judicial power," the Constitution peremptorily forbids that it should be vested anywhere but in a "court," whose "judges" are nominated, confirmed, sworn, hold office, are paid, and are removable, according to its requirements. By the first article in the Constitution, all legislative power "shall be vested in a Congress." By the second article, the "executive power shall be vested in a President." And by the third article, "the judicial power shall be vested" in the courts. And it was just as competent for Congress to invest "commissioners" with supreme "executive" or "legislative" power, as to vest them with "judicial" power.

If, by good fortune, or by miraculous interposition, a captured freeman should afterwards obtain a hearing in a court of the State to which he had been carried, such hearing would, in no sense, be in the nature of a review of the former case, either by appeal, writ of error, mandamus, or certiorari. It would be by the institution of *another* suit, under *another* government. The relation of the parties would be reversed. The respondent who was kidnapped must be plaintiff, the plaintiff kidnapper, or some one claiming under him, must be defendant. Were the various *possessory* writs known to the English common law, any the less "suits at common law;" or were the courts that tried them any the less *judicial* tribunals, because a *writ of right* could be afterwards brought, in which the previous judgments could not be pleaded in bar, and would be neither estoppel nor proof of title?

But to avoid the force of all this, it has been said, that the proceedings before the commissioner do not constitute a "case," within the meaning of the second section of the third article, which extends the "judicial power" of the United States to all "cases" in law and equity. Instead of being a "case," it is said to be only a summary inquiry designed to operate as a condition for executive action, in order to accomplish a special and limited object; like the inquiry, who are rightful claimants of money held by the Government under a treaty, and how much belongs to each one. It is also said, that if a construction so literal is to be put upon the words "judicial power," then no master in chancery could act in behalf of the courts in equity cases; no commissioner of bankruptcy could be appointed under a bankrupt law, &c.

In answer to the first position, that the proceedings for the reclamation of fugitive slaves do not constitute "a case," we have the most explicit declaration of the Supreme Court in more *cases* than one. In Prigg's case, 16 Peters, 616, the court say:

> "It is plain, then, that while a claim is made by the owner, out of possession, for the delivery of a slave, it must be made, if at all, against some other person; and inasmuch as the right is a right of property capable of being recognized, and asserted by proceedings before a court of justice between parties adverse to each other, it consitutes, in the strictest sense, a controversy between the parties, and a CASE, arising under the Constitution of the United States, within the express delegation of JUDICIAL POWER given by that instrument."
>
> "A CASE in law or equity consists of the right of the one party as well as of the other, and may truly be said to arise under the Constitution, or a law of the United States, *whenever its correct decision depends* ON THE CONSTRUCTION OF EITHER"—*Cohens* vs. *Virginia*, 6 *Wheat.*, 379, (5 Cond. Re., 101.)

Indeed, almost every page of the opinion of the court, in Cohens *vs.* Virginia, may be referred to

to show that they used the word "case" in a sense that embraces the proceedings for the reclamation of a fugitive slave. If so, then any tribunal, having jurisdiction over such a "case," is vested with a part of the "judicial" power of the United States.

In defining the word "case" as it occurs in this article, Judge Story says:

"It is clear that the judicial department is authorized to exercise jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, *whenever any question respecting them shall assume such a form, that the judicial power is capable of acting upon it.* When it has assumed such a form, it then becomes a *case*."—3 Comm., 507.

"A case, then, in the sense of this clause of the Constitution, arises, when some subject touching the Constitution, laws, or treaties of the United States, is submitted to the courts by a party, who asserts his rights in the form prescribed by law."—*Ibid.*

And as if these definitions were not clear enough, the learned judge adds:

"Cases arising under the *laws* of the United States are such as grow out of the *legislation* of Congress, within the scope of their constitutional authority, *whether they constitute the right, or privilege, or claim, or protection, or defence of the party, in whole or in part, by whom they are asserted.*"—3 Comm., 508.

It seems clear, then, that the proceedings authorized by the fugitive slave law cannot be taken out of the meaning of the word "cases," (cases in law and equity,) in the third article.

There is another clause in the third article which embraces these proceedings with equal clearness and certainty. "The judicial power shall extend to controversies" "between a State and citizens of another State." I suppose it will not be denied that a slave State may itself own slaves. They may escheat to it, be taken in execution for debt, &c. Now, a free citizen of Massachusetts may enter the port of Charleston as a mariner, be seized, imprisoned, and then sold into slavery for non-payment of jail fees. The State of South Carolina may purchase him. He may escape and return to Massachusetts. South Carolina may then claim him under this fugitive slave law.

In such a condition of things a "controversy" will exist between "a State and a citizen of another State." The commissioner can take jurisdiction of that case as well as of any other. And who will be bold enough to say that a trial and judgment by him, delivering up the respondent to bondage, would not be the exercise of "judicial power" in a controversy between "a State and a citizen of another State?"

The argument that if the commissioners under the fugitive slave law exercise "judicial power," then masters in chancery, commissioners of bankruptcy, and so forth, exercise it, is answered by a word.

Masters in chancery assist the court in preparing questions for decision, but they decide nothing. Every act of theirs may be reheard and reëxamined by the court at the pleasure of either party. They enter up no judgment; they issue no execution. They may express the opinion that the plaintiff or defendant is entitled to recover a certain sum of money or to recover the chattel in dispute; but neither of them can touch it. They are "*judges*" in no legitimate sense. They exercise no part of the "judicial power." The court may call upon them to state an account between parties, as it calls upon a clerk to make up the record, or a servitor to bring a law book, or asks a friend to cast up the interest on a promissory note. Such are the functions of a master in chancery, whose acts have no legal validity until assented to by the parties or sanctioned by the court.

So with regard to commissioners of bankruptcy. Every act they were ever authorized to perform derived all its legal force from the consent of the parties, or from the verdict of a jury, before whom it had been contested, or from the judgment of the court,—as may be seen at a glance, by reference to the acts creating them.

As to the supposed "judicial power" exercised by commissioners under a treaty to determine who are rightful claimants, and to how much each one is entitled, it is almost too obvious to remark, that as no citizen can bring "suit" against the Government, the "judicial power" does not "extend" to such a case, and the suggestion is puerile.

A word more will close my remarks on this topic. We have seen that a decision of the commissioner adverse to the respondent, delivers him over into absolute, unconditional slavery. But the prevalent opinion is, that a decision in the respondent's favor is no bar to a subsequent trial of the same person on a new "claim." It was actually held in Long's case, in New York, where the claimant apprehended that the decision of the commissioner would be against him, that he might abandon proceedings before that tribunal and resort to another. He did so, and prevailed. That is, the claimant may select from among an indefinite number of irresponsible magistrates, the one whose ignorance or whose turpitude may promise the best chances of success. But if, from any cause, he should apprehend defeat, then, and before the final judgment is pronounced, he can withdraw his suit and commence anew before another magistrate, and so throw the dice of the law again and again, until, by the very doctrine of chances, he shall ultimately succeed. Such want of equity between the parties stamps this law as infamous; for inequity is iniquity.

An argument in favor of the surrender of alleged fugitives from service under this law has been derived from the provisions for the surrender of fugitives from justice. But the difference between the cases is world-wide. In regard to slaves, the Constitution says: "No person HELD to service," &c.; but in regard to criminals, its language is, "A person CHARGED," &c.

Now who can avoid perceiving the difference between the legal force of the words "held" and "charged?" The obligor in a bond is "HELD and firmly bound." The grantor conveys an estate "to have and to HOLD" to the grantee and his heirs and assigns forever. So a lessee is to "HOLD" for the term specified. A man is HELD to answer a charge, &c., &c. In all these cases the word "*hold*" implies a perfect obligation or liability. But a man is "CHARGED" with an offence when a grand-jury has found an indictment against him, or when a competent person has made the requisite oath. It is not enough that a man be *charged* to be *held* to service. He must be *proved* to be *held*, or he remains free; the court must know that he is so *held* before they are authorized to surrender him. And how, under our Constitution, can the court know such facts as convert a presumptive freeman into a slave without a trial by jury?

Had the Constitution said a fugitive *guilty* of murder, &c., shall be delivered up, could a man be

delivered up until *proved* guilty of murder? Yet the word *guilty* is no stronger in reference to a fugitive from justice than is the word *held* in reference to a fugitive from service.

Another distinction between the cases is not less marked than the preceding. When the fugitive from justice is *claimed*, he is claimed by a *State* for having violated its law, and when he is delivered up, he is delived into the custody of the law. Legal process must have been commenced against him in the State from which he fled. He is returned that the prosecution thus commenced may be completed. He is delivered from an officer of the law in one State to an officer of the law in another State. He is transferred not to avoid a trial, but to have one. The original indictment or *charge*, the arrest in a foreign State, and the delivery and transportation to the place of trial, are but separate parts of one legal proceeding. The shield of the law is continued over him. All the time and all the way, he has the solemn pledge of the Government, that if not found guilty on the prosecution *then pending*, he shall be discharged.

But the alleged slave is claimed not by a State, but by an individual, and he is delivered up, not into the custody of the law, where his rights might be adjudicated upon, but into private hands; not into the hands of a neutral or indifferent person even; but into the hands of a party interested to deprive him of all his rights, and who himself claims to be judge, jury, and all the witnesses, in determining what those rights are. If he be not a slave, then he is delivered into the hands of a man-stealer. The shield of the law is not continued over him; nay, the fugitive slave act expressly provides that, whatever his rights may be, yet while in transitu, the law shall not recognize them. The certificate given by the commissioner to the claimant is to prevent "all molestation of him by any process issued by any court, judge, magistrate, or other person whomsoever." Under this practical interpretation of our Constitution, which, as its own preamble declares, was formed to "establish justice, and secure the blessings of liberty," it takes better care of felons than of freemen.

But there are other provisions of the Constitution respecting the trial of *criminals*, which would control this provision respecting the delivery of fugitives from justice even if there could be any doubts about its true construction. By the Constitution as originally adopted, and by the fifth amendment, all crimes, (except in cases of impeachment, or in the land and naval forces,) are to be tried in the State and district where committed. This makes it impossible to try a fugitive from justice in the State to which he has fled. It is an express prohibition against trying him there. But no such prohibition exists, no analogous provision exists, respecting the trial of "suits at common law," or the trial of "cases" or "controversies," in which a man may be deprived of "life, liberty, or property." These cases, therefore, not being taken out of the general provisions of the Constitution for securing the rights of the citizens, are left within it, and hence must be tried by a jury in the place where the claim is made.

My next objection to this law is, that it attempts to suspend the writ of habeas corpus.

The Constitution says, "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." The fugitive slave law declares that the "certificate" given to the claimant, his agent or attorney, "shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever." Now, as a writ of *habeas corpus* is a "process issued by a court or judge," it follows, that, according to the terms of the fugitive slave law, the slave owner is not to be "*molested*" by that process. What then will constitute a "molestation" of him under this law? Would the service of a writ of *habeas corpus* upon him, and, in case of his refusal voluntarily to obey it, the seizure of his person, and the carrying of him bodily before the court, perhaps a hundred miles out of his way;—would the moral necessity of employing counsel, and being otherwise subjected to great expense, both of money and time;—would any or all of these impediments and privations amount to what this law denominates "molestation?" If they would, then the slave owner is exempted from them. And if so exempted from them, is not the privilege of the writ of *habeas corpus* "suspended," as to his pretended slave? What else can a "suspension" of it mean?

But take the other alternative. Suppose the writ of *habeas corpus* to be issued, and a return of all the facts by which the supposed slave is held, to be made. The very return brings the fugitive-slave act before the court; and if the act is before the court, then, surely, the question is also before the court, whether it is constitutional or not. For, if unconstitutional, it is no law, and no justification of the restraint. Suppose the court to decide the act to be unconstitutional, and to discharge the prisoner. This surely would be a "molestation" of him, in the strongest sense of the word. To say the least of it, then, the law contains an insolent and audacious provision, forbidding the "courts, judges, magistrates, and all other persons whomsoever," to do what it may be their sworn constitutional duty to do,—that is, to inquire into the constitutionality of the law, and, if found to be unconstitutional, to disregard it.

I am aware of the astute reasoning of the present able Attorney General of the United States. He says, first, that the act does not suspend the writ of *habeas corpus*, because such suspension would be "a plain and palpable violation of the Constitution, and no intention to commit such a violation of the Constitution ought to be imputed" to Congress; and second, that if the certificate of the claimant is shown "upon the application of the fugitive for a writ of *habeas corpus*, it prevents the issuing of the writ; if upon the return, it discharges the writ, and restores or maintains the custody."

The first reason might be more briefly stated thus: it don't because it don't; or it don't because it can't.

The second is as little satisfactory as the first. If the facts are shown, it says, upon the fugitive's application for a writ, no writ will issue; if shown upon the return of the writ, it will be abated. Is it not most clear that this assumes the very question in dispute, whether the law on which the certificate is founded be constitutional or not? The statement may be all very true, if the law be con-

stitutional; but suppose the law to be unconstitutional, would not the statement be superlatively absurd? Yet this is the very question to be determined.

Let me test the soundness of this logic by a supposed case. There is, at the present time, a set of politicians amongst us, who are so alarmed at agitation that each one of them is a kind of Peter the Hermit, getting up a crusade to prevent it. Now, suppose Congress, "*as a peace measure*," should pass a law authorizing the Secretary of State to issue his warrant for the arrest and imprisonment, until the 4th day of March, 1853, or at least until after the next presidential nominations are made, of any person who shall be guilty of agitating *on the wrong side of said peace measure*, and should further declare that any jailer having such warrant from said Secretary, should be free from "all molestation by any process issued by any court, judge, magistrate, or other person whomsoever." Would it be a sound, judicial, lawyer-like argument, in such a case, to say that Congress could not, and could not have intended to, violate the Constitution, and therefore they had not violated it; and that if the warrant for commitment should appear upon the prisoner's application for a writ of habeas corpus, it would prevent its issuing; if upon its return, it would discharge it?

I think it would be impossible for any one to show that if the argument would be good in the first case, it would not be good in the second; and good, indeed, in any case, however outrageously violating the Constitution.

Again: suppose the 18th of September last, when the fugitive slave bill was approved, to have been a time "of rebellion or invasion," when the public safety required the suspension of this writ; would not such words as end the sixth section of the act be sufficient in law to suspend it? The Attorney General seems to rely upon the fact that the fugitive slave law does not mention the *habeas corpus*. He cannot surely mean to say that the privilege of this writ could not be suspended, unless by name. Even slavery is not mentioned in the Constitution *by name*. Suppose Congress, in a time of rebellion or invasion, to say, in regard to any class of cases which it might choose to specify, that if one person shall hold another under executive warrant, such warrant "shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever;" could any man deny that such words would not have ample force to suspend the privilege of this sacred and time-hallowed writ?

No! Heaven, and not the Thirty-first Congress be praised for it! though this infamous fugitive law *could not* suspend the habeas corpus, yet its words are adequate to do so. They purport to put the professional slave-hunter, as it regards the privilege from arrest, or "molestation," on the footing of a member of Congress; and it would not have gone one iota further, in point of principle, had they made his person inviolable while going to seize his prey, and when returning with it.

If the argument of the Attorney General be sound, then the whole "privilege of the writ of habeas corpus," under any corrupt law that any corrupt Congress may pass, will consist in the privilege of applying to a court for the writ, and being refused; or in suing out the writ, and having it quashed.

By the principles of the English law, the privilege of the habeas corpus attaches to all, whether bond or free. The words *Liber Homo*, says Lord Coke, extend to every one of the king's subjects, "be he ecclesiastical or temporal, free or *bond*, man or woman, old or young, or be he outlawed, excommunicated, or any other, without exception."—2 *Inst.* 55.

I now lay open for the abhorrence of mankind other deformities of this most odious law. In opposing a law, a distinction is to be made between the courts and the people; between the bench and the ballot-box. The courts can hear but one objection to a law. It may be impolitic, unrighteous, atrocious; but if it be constitutional they must sustain it. But before the tribunal of the people, a law may be impeached for any attribute of cruelty, oppression, or meanness. I denounce the fugitive slave law for all these qualities. In its scornful rejection of all those common law principles of evidence which have been ratified by the wisdom of ages; in the "summary" and Robespierre-like haste of its proceedings, and in the indelible blood with which its judgments are recorded, I believe it has not a parallel in the modern code of any civilized people.

Should the courts, hampered by previous decisions, and habituated to the spectacle and the support of a cruel institution, pronounce this law to be constitutional, such a judgment would give new force to every reason why the people should demand its modification or repeal. It is not enough that it should be declared void by the courts as against the fundamental law of the land; it deserves to be branded by the people as abhorrent to humanity, to civilization, and to the Gospel of Jesus Christ.

Look at its provisions in regard to evidence. The proof of three facts dooms the victim: first, that the person named in the warrant owes the claimant service; second, that he has escaped; and, third, identity.

Now, according to the law, all these facts may be proved in the absence of the party to be ruined by them. The whole case may be established by evidence taken behind the victim's back, without notice to him, without knowledge, or possibility of knowledge, on his part. A freeman may be suddenly arrested, and dragged into court, and on certain papers being read against him, which he never saw nor heard of before, he may be ordered into the custody of officers, and hurried to a returnless distance from wife, children, and friends, into the direst form of bondage the world ever knew, and at the expense of the very Government which he has been taxed to support, and which in turn was bound to protect him. I will prove by a reference to the act itself that these atrocities are among its conspicuous features.

By the 6th section it is made the duty of the "court, judge, or commissioner," "upon satisfactory proof being made by deposition *or affidavit*, in writing," "or by other satisfactory testimony," "and with proof, *also by affidavit*, of the identity of the person whose service or labor is claimed," "to make out and deliver to such claimant a certificate," &c.

And the 10th section of the act declares that the

transcript of a record "taken in any State or Territory, or in the District of Columbia," and "produced in any other State, Territory, or District," and being there "exhibited to any judge, commissioner, or other officer authorized to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and *conclusive* evidence of the fact of escape, and that the service or labor of the person escaping, is due to the party in said record mentioned." "And upon the production of other and further evidence, *if necessary*, either oral or *by affidavit*, of the identity of the person escaping, he or she shall be delivered up to the claimant."

Here, then, is a provision unknown to the common law of England, or to any colony, or people, or tribe that ever claimed the common law of England as their inheritance; unknown even to the Star Chamber, or High Commission Court; unknown in the bloodiest reigns of the bloodiest tyrants that ever sat upon the English throne, incorporated into the code of a republican government. Evidence, which may consign to slavery a man who is ostensibly and presumptively free,—free by the laws of the State where he is, and free everywhere by the law of God and humanity,—may be prepared in his absence, without any notice to him, and by any means of perjury or subornation of perjury to which guilt may resort, and this evidence is made legally sufficient to doom a fellow-being to relentless bondage. Notwithstanding those remarkable clauses in the Constitution which provide that "in all criminal prosecutions the accused shall enjoy the right to a *speedy* and *public* trial," "be informed of the nature and cause of the accusation," "be confronted with the witnesses against him," "have compulsory process for obtaining witnesses in his favor," and have the assistance of counsel for his defence;" yet Judge Story comments upon them in a spirit of dissatisfaction and sorrow; "for," says he "unless the whole system [of the common law] is incorporated, *and especially the law of evidence*, a corrupt legislature, or a debased and servile people, may render the whole little more than a solemn pageantry."—3 *Com.*, 662. In speaking of a "corrupt legislature," he seems to describe what this Congress has done in enacting the fugitive slave law at its last session; and, in speaking of a "debased and servile people," he speaks of just such a people as the advocates and champions of this law are now striving to make our people become!

The right of cross-examining witnesses is a common-law right, appertaining to all kinds of trials. It is a right without which all trials are but mockery. It is oftentimes a hardship to be confronted with witnesses of whom one knows nothing; but to be debarred from all opportunity of getting, by cross-questioning, at the knowledge that is in them; to be debarred from the right of showing that they are incompetent even to folly, or corrupt even to wilful perjury, this is a barbarity unknown to any code in the civilized world, save to the code of the United States of America. It is what even barbarians might be ashamed of. It is offering bounties and premiums on villany, and turning the courts into brokers' offices for perjury. Under such a law, is there a single colored person at the North who can rise to his labor in the morning, or lie down to his repose at night, with any feeling of security that avarice and false swearing may not then be at work for his destruction? Who can wonder, if he is tormented in his nightly dreams by images of the man-stealer, in far-off regions, plotting for his ruin? Who can wonder if, in his city residence, he starts as he turns the corner of every street; or, in his rural home, if he shudders at the rustle of every leaf, lest some kidnapper should spring from his ambush to seize him? That sense of personal security which every honest man is entitled to feel, this law abolishes. The virtuous man cannot rely upon his Government, nor the pious man upon his God, for earthly protection. For him the Prince of Darkness has obtained the ascendency in the affairs of men, and offers impunity to guilt, while he withdraws protection from innocence. The life of such a man is a perpetual agony of alarm for himself and for his family. A cloud charged with lightning is forever suspended over his head, and no genius can devise the means to turn aside its bolts.

Sir, before God, I believe that in the judgment of an impartial posterity, this method of taking evidence, by the cruellest of means and for the wickedest of purposes, will be held as atrocious and as execrable as that horrid method of extracting evidence by torture, which once prevailed, but which now even half-civilized nations have abolished. A brave heart could withhold a false confession, even upon the rack. With the images of wife and children before the eyes, martyrdom for their protection has been sweet. But there is no man whom God ever made who will not tremble, and stand aghast with consternation, with the conscious knowledge in his mind that he, his wife and children, and all that he holds dear upon earth, are at the mercy of every pirate-hearted villain between the Atlantic and the Rio Grande. Better, a thousand times better, had the Constitution allowed the citizen "to be compelled to be a witness against himself," and laid its prohibitions upon the fabrication of testimony against him in his absence.

The tenth section of the act declares that this evidence, thus obtained under a foreign jurisdiction, and in the absence of the party, shall be "*conclusive*." Now, the legal force and meaning of this provision is, that no amount or weight of evidence, no array of the most unimpeachable witnesses, not even the personal knowledge of the commissioner himself, who tries the case, though given under the sanction of an oath, which the law does not require him, as a commissioner, to take, shall be admissable to rebut this "conclusive" testimony. It is not made *prima facie* evidence merely against the respondent; it does not merely shift the burden of proof, so that the presumptive freeman becomes presumptively a slave, and must himself establish the freedom he would possess; but the law magnifies it into a species of proof that is "conclusive,"—that is, unquestionable, irrefragable, omnipotent,—like a miracle of God, not to be disputed. And this greatest of legal force is given to the worst of evidence. I say that a law so worthy of abhorrence, so truculent, so fiendish, is not to be found upon the statute-book of any other civilized nation on the globe.

Such, too, has been the practical construction given to the law. I see by the papers that in a late case which occurred at Detroit, the respondent declared himself a free man, and prayed for a continuance, to allow him to send to Cincinnati

for his free papers. But the commissioner refused the delay, saying that under this law, even free papers from the very man that claimed him, would be of no avail; for where the law made the evidence *conclusive*, nothing could rebut it. Any counter evidence must be admitted, on the hypothesis that the evidence already received may be controlled by it. But what an infinite absurdity to suppose that one mass or body of proof can be *conclusive*, over another which is *conclusive*. The law might just as well have made *color* conclusive, not only that the respondent was a slave, but that he ran away from the man who claims him. The law, as it stands, is as much a slave-making as it is a slave-catching law.

It declares that the proceedings shall be "summary;" and it provides a different rate of compensation, according as the decision is for freedom or against it. On what principle is this difference of compensation founded? Everybody can see at a glance that when a claimant can prepare his evidence beforehand and in secret, he would be a fool not to make out a *prima facie* case. If the respondent adduces no proof, the case goes by default, and judgment, without delay, is entered against him. But if the claim is contested, then witnesses are to be examined, arguments are to be heard, evidence is to be weighed, legal questions to be investigated, and such a decision made as the commissioner is willing to have go to the world. It is only in the last class of cases, the contested class, that the respondent will be discharged. The cases, therefore, that result in freedom will ordinarily occupy sixfold, or tenfold more time, besides requiring the exercise of more legal knowledge and ability, than those which terminate fatally to the respondent. Yet for decreeing the freedom of a man, the fee is but half as much as when a sentence of bondage is awarded against him. This surpasses the bribery of Judas by the high-priests. They had not diabolical wit enough to present a contrast between right and wrong, as a special stimulus for committing iniquity.

The "summary manner" of trial provided for by this law, when considered in reference to rights so momentous, shocks every Anglo-Saxon mind. One's blood must all be corrupted in his veins, before he can hear of it without indignation. It is the noblest attribute of our race, that we hold civil and religious liberty to be more sacred and more precious than life. Yet by what safeguards of Constitution, of law, and of forms of practice, is life protected amongst us? There must be a presentment by at least twelve sworn men, before a man can be held to answer to a charge by which it can be forfeited. Then come the traverse jury, the right of peremptory challenge, the assignment of counsel, the right to see the indictment beforehand, and to know the names of the witnesses who are to be called against the accused, and compulsory process to insure the attendance of witnesses in his favor! What noble barriers are these against the oppression of a powerful Government, and the malignant passions of powerful men! The probable culprit,—the man laboring under the most violent suspicion,—though caught with the blood-red dagger in his hand over the prostrate body of the victim, is guarded by all that human ingenuity has been able to devise; by all the knowledge that we can command this side of the omniscience, and by all the power this side of the omnipotence of God. Yet in the very community where these rights are reverenced and upheld, a man may be seized without notice, hurried to a tribunal without an hour for preparation, and then be borne away a thousand miles, where all that life has of hope and of enjoyment is taken away, and all that it knows of misery and of terror is realized.

Let me ask any man who ever had a case in court that was worth defending, whether he was prepared to meet it the first hour he had notice of its existence? A respondent's witnesses may be resident in different States, and distances of hundreds of miles may intervene between him and them. His proof may consist of deeds, or wills, or records, which cannot be found or authenticated without delay. His defence may consist of matters of law, which the ablest counsel may require time and the examination of books to investigate. All these obstacles to instantaneous readiness may exist together, and yet the inexorable mandate of the law scorns his appeal for that delay on which his highest interests are suspended, and dooms him to bondage because he cannot achieve impossibilities. Under such a law, not one man in ten who will be arrested, even though he should be free, will be prepared to establish that freedom. A great portion of these outcasts from human justice, I doubt not, are better prepared for the summons of instantaneous death, than for this summons to an instantaneous trial.

Then the cruel haste in executing judgment! The murderer is allowed a season of respite between the hour of sentence and the hour of death; the debtor may turn out goods to satisfy a creditor's demands; but the alleged fugitive has no reprieve. He has no opportunity to solicit money to redeem himself, or to negotiate for the ransom of body and soul. Swift and sure as an arrow to its mark, he is speeded on his way to the abodes of toil and despair. The witnesses who swore away his liberty may have been perjured, but he cannot stop to convict them. The court may have been corrupt, but he cannot remain to impeach it. However honestly rendered, the judgment may be reversible for error in law, but he cannot stay to set it aside.

Now, every one must see that where there is so little caution before trial, there should be a liberal opportunity for revision after it. But here is infinite exposure to error, with no chance for rectification. Overstepping the acts of the common tyrant, there is an infliction of the most heinous wrong, with a premeditated purpose that it shall not be repaired. The great and free Republic of North America has transferred the unwritten law of Judge Lynch to its statute book.

However clear the constitutional obligation of Congress to enact a law for the reclamation of fugitive slaves may be supposed by any one to be, there certainly are limitations to this obligation, which all the principles of our Government forbid the law-maker to transcend.

In the first place, this constitutional obligation must be strictly construed. The main and primary object of the Constitution was to protect natural rights; but the object of the fugitive slave clause was to protect a legal right in conflict with natural right. All judges of an honorable name, all courts in all civilized communities, have recognized a broad distinction in the principles of interpreting law. They have held that provisions against life

and liberty should be strictly construed, while those in favor of life and liberty should be liberally construed,—the one so construed as to inflict as little of pain and privation as possible; the other, to give as much of freedom and immunity as possible. These have become maxims, or axioms, of legal interpretation; and in their long and unbroken recognition, it is not too strong an expression to say, they command and impetrate a strict construction of that clause in the Constitution under which fugitives may be claimed. And the same legal maxims, in regard to all subjects touching life and liberty, bind Congress in legislating under the Constitution, as bind the judicial tribunals in administering the law.

Yet the fugitive slave law contains provisions, which there can be no pretence nor shadow of a pretence that the Constitution requires. By the Constitution, "No person held to service or labor in one State, escaping into another, shall be discharged." Into *another* what? Indisputably, into another *State*. It must mean *State*, and can mean nothing else; for the laws of language admit no other construction. The expression, "No person held in one *State*, escaping into *another* TERRITORY" would be not merely ungrammatical and un-English, but nonsensical. No man of common intelligence ever so constructed a sentence. Yet the sixth section of the act provides not only for the case of slaves escaping from one State into another State, but for their escape from a State into a *Territory*, and for an escape from a *Territory* into a State, and for an escape from one *Territory* into another *Territory*. Four classes of cases are provided for by the law, while but one of them finds any warrant in the Constitution.

Now let any one take a map of the United States, and see over what a vast area the law extends, over which the provision in the Constitution does not extend. The region is continental over which the law unconstitutionally extends, and this corresponds with the vast inhumanity of the principle which so extends it.

Mark another particular in which the provisions of the law go beyond the requirements of the Constitution The Constitution says the fugitive shall be "delivered up." The law makes provision for transporting him to the claimant's home. Is there any similar provision respecting any other species of property? If a northern merchant recovers a debt from his southern customer, does the Government assume the responsibility of seeing that it is paid to the creditor at his own home? If a northern man is robbed, and the stolen goods are found in another State, does the Government transport them back and pay freight? Then, why should Government interpose in this case to bear costs and risks, unless slavery is so meritorious an institution as to deserve the benefactions as well as the benedictions of freemen?

Then observe how artfully the law is worded, to make the assistance rendered to the claimant go beyond any supposed necessity in the case. "If," it says, "upon affidavit made by the claimant, ** 'his agent or attorney, * * that he has reason to 'apprehend that such fugitive will be rescued by 'force, * * before he can take him *beyond the limits of the State in which the arrest is made*, it shall 'be the duty of the officer * * to remove him *to 'the State whence he fled*." Thus, if danger is apprehended, *within the first ten miles*, the Government shall see the slave safely home, at its own expense, *though it be a thousand miles*.

But besides the unheard-of principle of saddling the Government with the expense of prosecuting the private claims of its citizens, within its own jurisdiction, I should like to know what provision the Constitution contains, which, though interpreted by the most latitudinarian constructionist, confers any right upon Congress thus to take the money of one citizen to pay the private expenses of another. There is no clause, or phrase, or word in that instrument, which favors the idea that the northern States should bear the expense, as well as the disgrace of thus remanding our fellow-men into bondage.

Besides, if the limits of the Constitution were to be transcended, in order to deliver an alleged fugitive to his master, would not the slightest element of equity, or decency even, require that when a freeman is condemned to bondage under the law, his expenses, incurred in returning to the place where he was plundered of himself, should be reimbursed to him by the Government, which had failed in its duty to protect him? If the claimant of James Hamlet could be supplied with a force at the Government's expense, to carry him into slavery, why should not the expenses of coming back into a land of freedom be reimbursed by the Government to Adam Gibson, after one of its venal and villanous instruments had wrested that freedom from him?

The law also provides for another thing which the Supreme Court has expressly declared to be unconstitutional, or beyond the power of Congress to enact. It provides that any *State* court of record, or judge thereof, in vacation, may take and certify evidence which shall be "conclusive" in regard to two of the three points which are made sufficient by the law to prove a man a slave. Thus, the two facts of slavery and of escape may be "conclusively" proved by the certificate of a judge of a *State* court, so that the judge before whom the alleged fugitive is brought, shall, in regard to these facts, exercise only a mere ministerial function. Now, he who has power to take and authenticate evidence, which it is predetermined shall be "conclusive" in the case, has power to decide the case. This, in its nature and essence is a judicial power; yet this power is given by the act to any *State* court of record, and to any judge thereof in vacation. Contrary to this, however, the Supreme Court has said; "Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself." *Martin* vs. *Hunter's Lessee*, 1 Wheat., 330. "The whole judicial power of the United States should be, at all times, vested in some courts created under its authority."—*Ib.* 331. "The jurisdiction over such cases, [cases arising under the Constitution, laws, and treaties of the United States,] could not exist in the State courts previous to the adoption, of the Constitution, and it could not afterwards be directly conferred on them; for the Constitution expressly requires the judicial power to be vested in courts ordained and established by the United States."—*Ib.* 335.

Yet, though it is expressly declared that Congress cannot vest any part of the judicial power of the United States in a State court, the State courts are empowered by this law to take and certify evidence, which is made "conclusive" in the case.

Look at the subject in another of its aspects. Here are some half million of free colored persons in the free States. They are unquestionably free. They possess, as fully as you or I, those prerogatives of freedom without which life ceases to be a blessing. Their freedom is guarantied to them by the Constitution of the United States, and by the constitutions and laws of the States respectively in which they dwell. *They* certainly are a part of the people. In some of the Sates, as in Massachusetts for instance, the law knows no iota of distinction, in any respect, between a black man and a white man; between one of European and one of African descent. It is the noble privilege of a Massachusetts man to say, that, as all men are equal before the divine law, so all men are equal within our borders, before the human law.

Now, scattered among this half million, more or less, of free colored people in the free States, there are a few hundreds, or a few thousands if you please, of "fugitives from service or labor," as the Constitution cunningly and evasively phrases it; which, being interpreted, means, as the whole world knows, fugitives from toil, and fetters, and stripes, and agony; fugitives from ignorance and the thick darkness of the intellect; fugitives from moral debasement, and from that enforced pollution of body and soul that spares neither wife, nor mother, nor a daughter's innocence; fugitives from the disruption of family ties, and from the laceration of all human affections; fugitives, in fine, from a heathenism of superstition and religious blindness into the glorious light of the Gospel of Jesus Christ.

Now, this free class and this fugitive class belong ethnologically to the same race. They speak the same language, and wear the same distinctive characteristics of feature and of form. All the unspeakable privileges, all the sacred titles and immunities of the one class are enshrined in the same complexion and in the same contour of person that attend the debasement and privation of the other. The vessels of honor and of glory are moulded into the same shape with the vessels of dishonor and of shame.

Now, after this debased class has been created by a wicked system of human laws, and after it is mingled with the free class, another law steps in and decrees that the former shall be remanded to their bondage. An awful decree! second in terribleness only to that which shall divide between the blessed and the accursed before the judgment-seat of God. Within the compass of human action, there never was an occasion that demanded more unerring justice and wisdom, that invoked more foresight and solicitude, that appealed more touchingly to every sentiment and instinct congenial to liberty, with which God has endowed and ennobled the soul of man, so to devise the law, if law there must be, as not to involve the free in the horrible doom of the enslaved. If, in the administration of penal laws, a knowledge of human fallibility has forced the maxim into existence and into practice, that it is better that ninety-nine guilty persons should escape than one innocent man should suffer, ought not the same benign rule to be adopted in our legislation whenever there is a possibility of exposing the free to the fearful fate of the enslaved? But instead of this jealousy and circumspection, what have we? A law whose first utterance abjures the distinction between freedom and bondage; a law which brings the whole free colored population of the United States within the outer circles of the whirlpool of slavery, that they may be ingulfed in its vortex; a law which empowers every villain in the country, by fabricating false testimony at his own leisure and convenience, to use his own freedom in order to rob other people of theirs! I aver, that before any moral tribunal, where right and wrong are weighed in the balances of the sanctuary, there is not a felony described in the whole statute-book that is more felonious than such a law.

It has become an axiom in the administration of justice,—an axiom slowly evolved by the wisdom of ages, but now firmly established and incorporated into the jurisprudence of every civilized community,—that the ethical policy of the law will tolerate no rule of action that opens the door to fraud or crime, but will even vacate solemn contracts, between parties otherwise competent, in its jealousy and apprehension of wrong. Hence the law applicable to common carriers, which will not allow a man to exonerate himself from liability even by express notice, lest opportunity should be given for collusion and fraud. Hence, too, the principle of law which forbids an insolvent debtor to pay, or even to contract to pay, a *bona fide* creditor, in anticipation of bankruptcy. Now, this principle applies with tenfold force to legislators,—withholding and repelling them from passing any law which may involve the innocent in the fate of the guilty, or the free in the bondage of the enslaved.

But the law violates a still deeper principle than these. I do not recollect the instance of a single northern man or northern press, utterly false to freedom, and venal as so many of them have been, that has professed entire satisfaction with the law. They palliate it, they strive by seductive party and pecuniary appeals to beguile men into its support. They look outside of it for pretexts to hide its inherent baseness; but not one of them, so far as I know, has had the effrontery to justify it on its intrinsic merits. Even those northern men who voted for it have sought refuge from the storm of righteous indignation that burst upon them, by alleging that it was an essential ingredient in a system of measures, and entered, as a necessary element, into a desirable compromise.

When this language is translated, what does it mean? Slaveholding California and no more: California was admitted, and thereby certain political and commercial advantages were gained. This, in legal language, was the consideration. The fugitive slave law was passed, and thereby the rights of freemen, the property of men in themselves, all the household sanctities, all the domestic endearments of half a million of men, were put in peril. This was the equivalent given! A mere barter of the holiest interests for worldly advantages! And these interests were given away by men who did not own them to give. The whites, North and South, played a game, and made the black people their stakes. Who authorized the law-makers to derive a benefit to themselves from doing this infinite wrong to others? Who gave them the terrible prerogative of making others suffer for their pleasure? I say it with reverence, but still I say it with emphasis, that we cannot conceive of God himself as having power to inflict vicarious suffering without the free consent of the sufferer! Yet

the atrocities of this law are defended by those who made it, on the ground that they and other white men have secured benefits to themselves by sacrificing the liberty, happiness, and peace of half a million of their fellow-beings of a different color. Cause and counsellor are alike; for the defence is as profligate as the act it defends.

I say, sir, it is the population of African descent in the free States which is specially put in peril by this law. Occasionally, indeed, persons of unmixed white blood are seized and enslaved under it. These cases, however, are comparatively rare. But suppose the reverse. Suppose circumstances to be such that the whole body of the white population should be as much endangered by it as the colored people now are. Suppose that not only the white voters themselves, but their wives and their children, were as liable to be "*Ingrahamed*," as the blacks; suppose this, I say, and would the existence of the law be tolerated for an hour? Would there not be an uprising of the people, simultaneous and universal against it, and such a yell of execration as never before burst from mortal lips? The name of every man who had voted for it, or who should defend it, would be entered upon that apostate list at whose head stands the name of Judas. Christian and Infidel, Jew and Gentile, would execrate it alike. Why, then, if they would do this to avert such peril from themselves and their families, do they not do it when their sable brethren are in jeopardy? Alas! there is but one answer! From selfish considerations; from the love of wealth or the love of power, they have discarded that heaven-descended maxim, "Whatsoever ye would that men should do unto you, do ye the same unto them."

And it is this very class of men who have thus abjured the precepts of Jesus Christ, who have trampled upon the divine doctrines of liberty and love, that now so clamorously summon us to an Obedience to Law.

In answer to this call let me say, that true obedience to law is necessarily accompanied and preceded by a reverence for those great principles of justice and humanity without which all law is despotism. How can a man pretend to any honest regard for the principle of obedience to law when he is willing, as in the case of this fugitive slave act, to transcend our constitutional law, and to invade the Divine law? It is but an appeal to the lower rule of action to justify a violation of the higher. Under the pretext of rendering unto Cæsar the things that are Cæsar's, it denies to God the things that are God's.

And again, a true reverence for law is a general principle, and not an isolated fact. It applies to all laws collectively, and not to any one law in particular. It bestows its greatest homage upon those laws that embrace and confer the most of human welfare; for, were all the laws of a community, or the great majority of them, unrighteous, then disloyalty to law would be the virtue. Can the class of men who demand our allegiance to the fugitive slave law stand this test? We have usury laws, which not only carry the legal force of statutes, but the moral power of the greatest names in legislation and in statesmanship. Are the men in New York, in Philadelphia, and Boston, who are most vehement in support of the fugitive slave law, signalized for their regard to the statutes against usury?

Is not money lent in all those cities on the same principle that wreckers send a rope's end to a drowning man,—for as much as they can extort? It is notorious that among the great body of merchants and capitalists in those cities, interest is regulated by the pressure upon the money-market, and that no more idea of law mingles with their contracts, than in California, where there is no law on the subject.

We have laws restricting the sale of intoxicating liquors, and designed to promote the glorious object of temperance. For which have our cities been conspicuous,—for their obedience to these laws or for their violation of them? A few years ago, when a question of the constitutionality of a law of Massachusetts for the restraint of intemperance arose, did not its two distinguished Senators appear in the Supreme Court of the United States, and make the most strenuous exertions to annul the law of their own State, and to open anew the floodgates for overwhelming their own constituents in misery and ruin,—the self-same gentlemen who are now so intolerant even of discussion?

Look at the complaints which come to us every day from the friends of a protective tariff. They tell us that our revenue laws are fraudulently and systematically evaded; and they number the violations of these laws by thousands and tens of thousands. Who are the violators? Not men living in the country; not the farmers and mechanics and laborers,—the substratum of our strength and the origin of our power,—but city merchants, the getters-up of "Union meetings," and the members of "Safety and Vigilance committees," who are so earnest in inculcating those lessons of obedience, by their precepts, which they have done so little to inculcate by their example.

The southern States are loud in their calls upon us to execute the fugitive slave law. But what examples have they set us on the subject of obedience to law? I think I may be pardoned for mentioning a few cases, to show how their preaching and their practice tally.

In 1831, the Legislature of Georgia offered a bribe of *five thousand dollars* to any one who would arrest, and bring to trial and conviction, in Georgia, a citizen of Massachusetts, named William Loyd Garrison. This law was "approved" by William Lumpkin, Governor, on the 26th December, 1831. Mr. Garrison had never stept foot within the limits of Georgia, and therefore it was not a reward for his trial and conviction, but for his abduction and murder.

At a meeting of slaveholders, held at Sterling, in the same State, September 4, 1835, it was formally recommended to the Governor, to offer, by proclamation, the five thousand dollars appropriated by the act of 1831, for the apprehension of either of ten persons, citizens, with one exception, of New York or Massachusetts, whose names were given; not one of whom, it was not even pretended, had ever been within the limits of Georgia.

The Milledgeville (Ga.) Federal Union, of February 1, 1836, contained an offer of $10,000 for kidnapping A. A. Phelps, a clergyman of the city of New York.

The committee of vigilance, (another "committee of vigilance,") of the parish of East Feliciana, offered in the Louisville Journal of October 15,

1835, $50,000 to any person who would deliver into their hands Arthur Tappan, a merchant of New York.

At a public meeting of the citizens of Mount Meigs, Alabama, August 13, 1836, the *honorable* Bedford Ginress in the chair, a reward of $50,000 was offered for the apprehension of the same Arthur Tappan, or of Le Roy Sunderland, a Methodist clergyman of New York.

Repeated instances have occurred in which the Governors of slave States,—Virginia, Georgia, Kentucky, Alabama, &c.,—have made requisitions upon the Governors of free States, under the second section of the fourth article of the Constitution, for the surrender of free citizens, *as fugitives from justice*, when it was well known that the citizens so demanded were not within the limits of the slave States at the time when the alleged offence was committed, and, in some instances, had never been there in their lives,—high executive perversions of the Constitution of the United States by Chief Magistrates who had sworn to support it.

For nearly twenty years past the post office laws of the United States have been systematically violated in slave States, the mail-bags rifled, and their contents seized and publicly burned; and, in some instances, these violations have been enjoined, under heavy penalties, by a law of the States. There are several of the slave States on whose statute books these laws, commanding a violation of the post office, stand to-day.

During Mr. Adams's administration, a man by the name of Tassels, in Georgia, was adjudged to be hung, under a law of the State, as clearly unconstitutional as was ever passed. A writ of error was sued out from the Supreme Court of the United States, in order to bring the case before that tribunal for revision. But the State of Georgia anticipated the service of the writ, and made sure of its victim by hanging him extemporaneously.

Within a few weeks past,—the accounts having but just now reached us,—an aged and most respectable individual of the name of Harris, a citizen of New Hampshire, has been tried by a mob in South Carolina, and tarred and feathered, because he happened to have *in his trunk* a sermon which had been sent to him by one of his acquaintances, a clergyman at the North; though he had never showed the sermon to a single individual, nor whispered a word of its contents. Another man, a Doctor Coles, belonging to Boston, who had been lecturing on the subject of physiology, was, within a few days, seized and carried before a magistrate, in the same State, his trunks rifled, the private letters sent to him by his wife and family publicly read, with the most indecent comments, and all without any shadow of reasonable suspicion against him.

The unconstitutional imprisonment of northern seamen in southern ports is an occurrence so frequent, and so universally known, that I need not spend time to enumerate or to describe the cases.

The President of the United States has made proclamation, and proffered the military and naval force of the United States to aid any southern slave owner in reducing his fugitive slave to a new bondage; but I have not heard that he has made any similar proclamation, or manifested any anxiety for the support of that part of the Constitution which says that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Now, with a few exceptions, it is these very classes of men who violate the laws against extortion and usury; who break down the barriers against the desolations of intemperance; who, almost alone of all our citizens, are implicated in the breach of the revenue laws; who annul the post office laws of the United States; who offer rewards for free northern citizens, that they may get them in their power to lynch and murder them; who demand free citizens as fugitives from justice, in States where they have never been, and who imprison free citizens and sell them into slavery;—it is these classes who are now so suddenly smitten with a new sense of the sacredness of law, and of the duty of obedience to law,—not of the laws of God, not even of the laws of man, in general, but of this most abominable of all enactments, the fugitive slave law in particular.

I do not cite the above cases from among a thousand similar ones, as any justification or apology for forcible and organized resistance to law by those who even constructively can be said to have given it their consent. But the words of a preacher do not "come mended from his tongue," when his name is a scandal among men for his violation of all the precepts he enjoins.

And now, sir, when I am called upon to support such a law as this, while it lasts, or to desist from opposing it in all constitutional ways, my response is, Repeal the law, that I may no longer be called upon to support it. In the name of my constituents, and by the memory of that "old man eloquent," in whose place it is my fortune to stand, I demand its repeal. I demand it,—

Because it is a law which wars against the fundamental principles of human liberty.

Because it is a law which conflicts with the Constitution of the country, and with all the judicial interpretations of that Constitution, wherever they have been applied to the white race.

Because it is a law which introduces a fatal principle into the code of evidence, and into judicial practice,—a principle before which no man's liberties and no man's rights of any kind can stand.

Because it is a law which is abhorrent to the moral and religious sentiments of a vast majority of the community that is called upon to enforce it.

Because the life and character of so many of its apologists and supporters are themselves potent arguments against it.

Because it is a law which, if executed in the free States, divests them of the character of free States, and makes them voluntary participators in the guilt of slaveholding.

Because it is a law which disgraces our country in the eyes of the whole civilized world, and gives plausible occasion to the votaries of despotic power to decry republican institutions.

Because it is a law which forbids us to do unto others as we would have them do to us, and which makes it a crime to feed the hungry, to clothe the naked, and to visit and succor the sick and the imprisoned.

Because it is a law which renders the precepts of the Gospel and the teachings of Jesus Christ seditious; and, were the Savior and his band of disciples now upon earth, there is but one of them who would escape its penalties by pretending "to conquer his prejudices." And, finally,

Because the advocates and defenders of this law have been compelled to place its defence upon the express ground that the commandments of men are of higher authority than the ordinances of God.

In Hooker's sublime description of Law when understood in its generic sense, he says:

"Of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels, and men, and creatures, of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the Mother of their peace and joy."

Now, sir, with these glorious attributes of "Law," I say the fugitive slave law of the last session possesses not one quality in common, nor in similitude. To say that the seat of such a law is in the "bosom of God" is intensest blasphemy. To say that it is "the harmony of the world," is to declare that the world is a sphere of ubiquitous and omnipotent wrong, unchecked by any thought of justice, and devoid of any emotion of love. To say that "all things in heaven do homage" to such a law, is to affirm of the realms of light what is true only of the realms of darkness. The "least" do not "feel its care," but tremble and wail beneath its cruelty; while the "greatest" and the strongest *are* "exempt from its power," for they made it not for themselves but for others. To no class of "creatures," rational or irrational, human or divine, can it prove to be the "Mother of peace and joy:" but wherever it extends, and as long as it exists, it will continue to be an overflowing Marah of bitterness and strife.

As the great name of Hooker has been profanely cited in behalf of this law, I will close by quoting his distinction between those laws of human Governments which ought to be obeyed, and those which ought not:

——"which laws," says he, "we must obey, *unless there be reason shewed which may necessarily enforce that* THE LAW OF REASON OR OF GOD BOTH ENJOIN THE CONTRARY."

Printed at the Congressional Globe Office.